Case No. 98-223

In The
Supreme Court Of The United States
October Term 1998

STATE OF FLORIDA, *Petitioner*,

v.

TYVESSEL TYVORUS WHITE, *Respondent*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JOINT APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN SNURKOWSKI*
DANIEL A. DAVID
The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Counsel for Petitioner

NANCY DANIELS
PUBLIC DEFENDER

DAVID GAULDIN*
Leon County Courthouse
Tallahassee, FL 32301
(850) 488-2458
Counsel for Respondent

*Counsel of Record

Petition for Certiorari Filed July 31, 1998
Certiorari Granted November 16, 1998

87pp

TABLE OF CONTENTS

93-2100 (

PRI[illegible]LE CAUSE AFFIDAVIT / ARREST / NOTIC[illegible] APPEAR

2

PANAMA CITY P.D.

SAM'S CLUB 23RD ST. PANAMA CITY,FL. | 1707 W. 23RD ST. PANAMA CITY,FLA.

PIERCE 463

WHITE, TYVESSEL TYVORUS

4004 E. 11TH ST. PANAMA CITY,FLA.

SAM'S CLUB PANAMA CITY, FLA.

263-27-9929 | PANAMA CITY,FL

STOCKER

POSSESSION COCAINE

2-ROCKS

ON OCTOBER [illegible] 93 AT 8:30 [illegible] IN PANAMA CITY, BAY COUNTY, FLORIDA, SPECIFICALLY 1707 W. 23RD ST..SAM'S CLUB. THE ABOVE NAMED DEFENDANT WAS ARRESTED ON A SIGNED COMPLAINT FOR SALE OF COCAINE. A SEARCH OF THE DEFENDANT'S VEHICLE REVEALED TWO CRACK COCAINE ROCKS CONCEALED IN THE ASHTRAY. THE ABOVE NAMED DEFEDANTS VEHICLE WAS BEING SEIZED BY THIS OFFICER FOR USE IN THE COMMISSION OF A FELONY ON THE OTHER CHARGES. A FIELD TEST SHOWED A POSITIVE REACTION TO THE PRESENCE OF COCAINE. DUE TO THE ABOVE STATED FACTS YOUR AFFIANT BELIEVES THE DEFENDANT IS IN VIOLATION OF F.S. 893.13 TO WIT POSSESSION OF COCAINE.

OCT 24 AM 93

463

JOHN D. PIERCE #63

462

1

1-1

IN THE COUNTY COURT/CIRCUIT COURT
IN AND FOR B. COUNTY, FLORIDA
PCP.D. 0606228219

Z

STATE OF [F]LORIDA
Vs.

Tyevessel Tyvorus White

AFFIDAVIT OF INSOLVENCY

STATE OF FLORIDA, COUNTY OF BAY

Before the undersigned Judge, personally appeared the Defendant, who being first duly sworn, deposes and says that he is the defendant in the above styled case, that he has been advised that he may be held to answer to the Court, that he is insolvent, that he has no income or property that would permit him to employ an attorney, that he has not disposed of any property for the purpose of taking advantage of this oath, that he does desire to have an attorney to represent him, that he desires that this Court appoint the Public Defender of the 14th Judicial Circuit to represent him in this case, that the following statements regarding his marital status, residence, employment, and financial status are true and correct:

I. PERSONAL STATUS:

a. Single ✓ Married ____ Separated ____ Divorced ____

b. Dependant's Wife ____ Children, No. 2 Others, No. ____ And Relationship ____

c. Date of Birth 8-03-64 Age 29 Highest Grade Achvd. or Educational Level 11th

II. RESIDENCE:

Defendant's address:

4004 E. 11th St. Panama City Fl. 32405

Street City State Zip Code Phone No.

III. EMPLOYMENT:

Name, address, and phone number of employer:

Sam's Club 23rd St. 32404

How long has defendant been employed by present employer? 5 months

Income: Monthly $ 600.00 or Weekly $ ____

What is defendant's job? stocker

FILED

IV FINANCIAL STATUS:

1. Owner of real property: Yes ____ No X

a. Description ____

b. Address ____

c. In whose name ____ N/A

d. Estimated value ____ $ ____

e. Total amount owed ____ $ ____

Owed to: ____ $ ____

____ $ ____

f. Annual income from property ____ $ ____

2. Other property:

a. Automobile: Make ____ Model ____

In whose name registered ____

Present value of car ____ N/A $ ____

Amount owed ____ $ ____

Owed to ____

3

b. All other personal property of any kind

boats	$ /	watches	$ /	rifles	$ /
motors	$ /	rings	$ /	shotguns	$ /
trailers	$ /	pistols	$ /	stereos	$ /

Any other Items:

item	value
	$
	$
	$
	$

c. Cash on hand ____ $ 20.00

Cash in banks and savings & loan associations ____ $ 0

Names and address of banks and associations:

____

____

3. Obligations:

a. Monthly rental on house or apartment ____ $ 0

b. Mortgage payments on house (monthly) ____ $ ____

To whom owed	Amount
	$
	$
	$

Total monthly payments on debts ____ $ 200.00

4. Other information pertinent to defendant's financial status:
(Include stocks, bonds, savings bonds, interests in trusts either owned or jointly owned.)

N/A

Signed X Tyevessel T. White
Defendant

Subscribed and sworn before me this
14 day of October, 1993
RIS B. Brown (CCA)

ORDER ADJUDGING DEFENDANT TO BE INSOLVENT/SOLVENT (AND APPOINTING PUBLIC DEFENDER)

POSTED
PKN

The above-named defendant now being before this Court and having made the Affidavit of Insolvency, it is therefore:

☑ ORDERED, ADJUDGED AND DECREED that the Defendant is insolvent within the meaning of the law, and that the Public Defender of the 14th Judicial Circuit is appointed to represent the Defendant as provided by law.

☐ ORDERED, ADJUDGED AND DECREED that the Defendant is not insolvent within the meaning of the law, and Defendant's request for appointment of the Public Defender is accordingly denied.

DONE AND ORDERED at Panama City, Florida, this ____ day of ____ A. D. 19__

Amount of Bond

Notes:

Judge

4

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,
Plaintiff,

vs.

TYVESSEL TYVORUS WHITE,
B/M, DOB 8/3/64,
SSN 263-77-9929,
Defendant.

INFORMATION CHARGING

POSSESSION OF A CONTROLLED SUBSTANCE (3°F)

Florida Statute 893.13
Case No. 93-2100G

FILED

William A. Lewis, Assistant State Attorney for the Fourteenth Judicial Circuit of the State of Florida, duly appointed and designated to sign Informations on behalf of Jim Appleman, State Attorney, prosecuting for said State of Florida, in the name of and by the authority of the State of Florida, in the County of Bay, under oath, informs the Court that

TYVESSEL TYVORUS WHITE, on or about the 14th day of October, 1993, in the County and State aforesaid, was unlawfully in actual or constructive possession of a controlled substance, to-wit: Cocaine, in violation of Section 893.13, Florida Statutes.

William A. Lewis, Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, under oath, states that the allegations set forth in the INFORMATION are based on facts that have been sworn to as true, under oath, by material witness(es), and which, if true, would constitute the offense(s) therein charged, and that this INFORMATION is filed in good faith.

The foregoing instrument was sworn to and subscribed before me by William A. Lewis, who is personally known to me, this 14th day of February, A.D., 1994.

Teresa R. Plenge

TERESA R. PLENGE

William A. Lewis
Assistant State Attorney
914 Harrison Avenue
Post Office Box 1040
Panama City, Florida 32402
(904) 872-4473
Florida Bar No. 339520

CIRCUIT COURT MINUTES

DATE June 10, 1994 TIME 9:02

PRESIDING JUDGE Clinton Foster

CLERK PRESENT S. Jones

COURT REPORTER PRESENT S. Lessig

FILED

STATE OF FLORIDA
VS
Tyvessel T. White

ATTORNEYS PRESENT
FOR STATE Bill Lewis
FOR DEFENDANT Sandra Atkin

CASE NUMBER 93-2100

CHARGE poss. of cocaine

9:02 Court called to order - court in session
9:02 Jury exit to jury room
9:04 Jury enters courtroom
9:04 Jury sworn in by clerk
9:05 Judge gives jury preliminary instructions
9:09 Judge invokes the rule to the witnesses
9:10 State (Bill Lewis) gives opening statements
9:14 defense (Sandra Atkins) gives opening statements
9:16 State calls Randy Squire - sworn in
State direct examine Randy
9:17 Sidebar conference
9:21 State continue direct examination of Randy
9:25 defense cross examine Randy
9:30 State redirect examine Randy
9:31 defense recross examine Randy
9:32 State redirect examine Randy
9:33 Jury exit to jury room
9:33 Judge [illegible] Randy
9:3[illegible] Jury enters courtroom
9:3[illegible] State calls [illegible] - sworn in
State direct examine [illegible]

1c

STATE VS. Tyvessel T White CASE NO. 93-2100

9:43 defense cross examines John
9:48 Jury exit to jury room
9:48 Δ Mtn to Suppress
9:53 Δ Mtn held for ruling
9:53 Jury enters courtroom
9:53 defense continues cross examination of John
9:55 State redirect examines John
9:55 Sidebar conference
9:56 State continues redirect examination of John
9:58 State rests
9:58 defense rests
9:58 15 minute recess - jury out
10:12 Jury in box
10:13 defense gives closing arguments
10:19 State gives closing arguments
10:36 defense gives closing arguments
10:47 Judge gives jury instructions
10:54 Jury exits to jury room to deliberate
11:15 Jury enters courtroom with verdict
11:16 Verdict: Guilty of poss of cocaine as charged-

17

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,

Plaintiff,

vs. Case No. 93-2100G

TYVESSEL TYVORUS WHITE,

Defendant.

FILED
JUN 10 12 PM '94

VERDICT

WE, the Jury, find as follows as to the Defendant, TYVESSEL TYVORUS WHITE.

[Check Only One]

✓ a. The defendant is guilty of Possession of Cocaine, as charged.

___ b. The defendant is not guilty.

SO SAY WE ALL.

DATED this 10th day of June, A.D., 1994.

Cheria L. Hoyt
Foreperson

FIL.
DATE June 10 1994 TIME 11:16
HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BY Jennifer Reed
DEPUTY CLERK

18

JUDGE: Clinton F[illegible]r
COURT REPORTER: S Lessig
STATE ATTY: Bill Lewis
STATE VS. Tyvessel T. White
DEFENDANT IN CUSTODY? YES (X) NO ( )

CLERK: G. [illegible]nes
PROB. OFFICER:
DEF. ATTY: Sandra Atkins
DATE: June 10 1994

CASE # 93-2100 CHARGE: poss of cocaine
CASE # CHARGE:
CASE # CHARGE:
CASE # CHARGE:

P L E A

CASE # 93-2100 VOP ___ VOCC ___
TO THE CHARGE OF A/C
NOLO ___ GUILTY ___ ADM VIOL ___ PSI ___
PSR ___ SS ___ SENT SET July 20, 1994
NDNIP ___ REINS ___ REVOKED ___

updated Scoresheet

CASE # ___ VOP ___ VOCC ___
TO THE CHARGE OF ___
NOLO ___ GUILTY ___ ADM VIOL ___ PSI ___
PSR ___ SS ___ SENT SET ___
NDNIP ___ REINS ___ REVOKED ___

S E N T E N C I N G

CASE # 93-2100 ADJ W/H ___ GUILTY ✓
DOC ___ BCJA ___ CREDIT ___
COMM CONT ___ ST PROB ___ RESTIT ___
1ST ___ BCJA CC $ ___ FINE $ ___ $100 DR ___
CONC ___ W/ ___ CONSEC ___ W/ ___
HAB OFF ___ PREV COND RE-IMPOSED ___

MOTIONS
1. Δ Mtn to suppress - held for ruling
2. Δ Mtn for directed verdict of acquittal - denied
3.
GRANTED ( ) ( ) ( ) DENIED ( ) ( ) ( ) CONT. ( ) ( ) ( ) HELD FOR RULING (✓) ( ) ( )
DEFENDANT CAN BE RELEASED ON THESE CHARGES? YES ___ NO ___ DEF. REMANDED YES X NO ___
DEFENDANT TO REPORT TO PROBATION & PAROLE UPON RELEASE YES ___ NO ___
WHITE - CLERK YELLOW - CCA PINK - BCSO GOLD - PROBATION & PAROLE

Guilty as charged

Judge reserves ruling on legal issues

FILED JUN 10 12 [illegible] PM '94

19

Judge: FOSTER CLINTON
Court Reporter: LESSIG BAKINS
St Att: LEWIS WILLIAM A
State vs WHITE, TYVESSEL TYVCRUS
Defendant in Custody? YES [X] NO [ ]

Clerk: PAM ME[illegible]NE
Probation Off: KEITH PATTERSON
Def Att: ATKINS SANDRA G
Date: 07/20/94

Case# 9302100CFA Chrg 1: POSSESSION OF COCAINE 0006228219 N

P L E A

CASE# 93-2100 VOP [ ] VOCC [ ] | CASE# ___ VOP [ ] VOCC [ ]
TO THE CHARGE OF ___ | TO THE CHARGE OF ___
NOLO [ ] GUILTY [ ] ADM VIOL [ ] PSI [ ] | NOLO [ ] GUILTY [ ] ADM VIOL [ ] PSI [ ]
PSR [ ] SS [ ] SENT SET [ ] | PSR [ ] SS [ ] SENT SET [ ]
NOD [ ] REINS [ ] REVOKED [ ] | NOD [ ] REINS [ ] REVOKED [ ]

G - by jury

S E N T E N C I N G

CASE# 93-2100 ADJ W/H [ ] GUILTY [ ] | CASE# ___ ADJ W/H [ ] GUILTY [ ]
DOC ___ BCJA ___ CREDIT ___ | DOC ___ BCJA ___ CREDIT ___
COMM CONTROL ___ ST PROB ___ REST DIR ___ | COMM CONTROL ___ ST PROB ___ REST DIR ___
1ST ___ BCJA CC ___ FINE ___ S/C ___ | 1ST ___ BCJA CC ___ FINE ___ S/C ___
$100 DRUG ___ PSI/BCAP ___ ASSOC COSTS ___ | $100 DRUG ___ PSI/BCAP ___ ASSOC COSTS ___
HAB OFF [ ] PREV COND REIMPOSED [ ] 1ST STEP ___ | HAB OFF [ ] PREV COND REIMPOSED [ ] 1ST STEP ___
CONC [ ] W/ ___ CONSEC [ ] W/ ___ | CONC [ ] W/ ___ CONSEC [ ] W/ ___

CASE# ___ ADJ W/H [ ] GUILTY [ ] | CASE# ___ ADJ W/H [ ] GUILTY [ ]
DOC ___ BCJA ___ CREDIT ___ | DOC ___ BCJA ___ CREDIT ___
COMM CONTROL ___ ST PROB ___ REST DIR ___ | COMM CONTROL ___ ST PROB ___ REST DIR ___
1ST ___ BCJA CC ___ FINE ___ S/C ___ | 1ST ___ BCJA CC ___ FINE ___ S/C ___
$100 DRUG ___ PSI/BCAP ___ ASSOC COSTS ___ | $100 DRUG ___ PSI/BCAP ___ ASSOC COSTS ___
HAB OFF [ ] PREV COND REIMPOSED [ ] 1ST STEP ___ | HAB OFF [ ] PREV COND REIMPOSED [ ] 1ST STEP ___
CONC [ ] W/ ___ CONSEC [ ] W/ ___ | CONC [ ] W/ ___ CONSEC [ ] W/ ___

NO PSI [ ] B/B/U [ ] A/C COUNSEL [ ] PSYCH/SEX COUNSEL [ ] GED/EMPLOY [ ] ESSAY [ ] CON TERM EARLY [ ]
STAY AWAY FROM VICTIM [ ] NO ALCOHOL [ ] DO NOT VISIT ALCOHOL PLACES [ ] DL REVOKED ___ YRS
APPEAL ___ COMMENTS ___

M O T I O N S

Motion to suppress held under advisement

GRANTED [ ] [ ] [ ] DENIED [ ] [ ] [ ] CONT [ ] [ ] [ ] HELD UNDER ADVISEMENT [ ] [ ]

DEFENDANT CAN BE RELEASED ON THESE CHARGES Y [ ] N [ ]
DEFENDANT TO BE REMANDED ON THESE CHARGES Y [ ] N [ ]
DEF TO REPORT TO PROBATION & PAROLE UPON RELEASE Y [ ] N [ ]

FILED JUL 20 2 47 PM '94

defer Sentence til Aug 17, 1994

WHITE - CLERK YELLOW - CCA PINK - BCSO BLUE - PROBATION

21

Judge: FOSTER CLINTON
Court Reporter: SLESSIG
St Att: LEWIS WILLIAM A
State vs WHITE, TYVESSEL TYVORUS
Defendant in Custody? YES [X] NO [ ]

Clerk: PAM NEWSOME
Probation Off: ATKINS MIVENS
Def Att: ATKINS SANDRA B

Date: 08/17/94

Case# 93020990FA	Chrg 1: SALE OF COCAINE	0006228219	N
Case# 93020970FA	Chrg 1: SALE OF COCAINE	0006228219	N
Case# 93020980FA	Chrg 1: SALE OF COCAINE	0006228219	N
Case# 93021000FA	Chrg 1: POSSESSION OF COCAINE	0006228219	N

P L E A

CASE# _____ VOP [ ] VOC [ ] | CASE# _____ VOP [ ] VOC [ ]
TO THE CHARGE OF _____ | TO THE CHARGE OF _____
NOLO [ ] GUILTY [ ] ADJ GUILT [ ] PSI [ ] | NOLO [ ] GUILTY [ ] ADJ GUILT [ ] PSI [ ]
TRW [ ] SE [ ] SENT SET [ ] | PSR [ ] SE [ ] SENT SET [ ]
WD [ ] WDRS [ ] REVOKED [ ] | WD [ ] WDRS [ ] REVOKED [ ]

S E N T E N C I N G

CASE# 93-2100 G Dayfany ADJ GUILT [ ] GUILTY [ ] | CASE# 93-2098 ADJ GUILT [ ] GUILTY [ ]
SEC _____ ESCAP _____ CREDIT _____ | SEC _____ ESCAP _____ CREDIT _____
CONT CONTROL _____ IN PREP _____ REST DIR _____ | CONT CONTROL _____ IN PREP _____ REST DIR _____
DET _____ ESCAP CC _____ FINE _____ S/C _____ | DET _____ ESCAP CC _____ FINE _____ S/C _____
RICO SALE _____ PSA/BOAP _____ MISSOC COSTS _____ | RICO SALE _____ PSA/BOAP _____ MISSOC COSTS _____
HAB OFF [ ] PREV CCRC REINFORCE [ ] DET STEP _____ | HAB OFF [ ] PREV CCRC REINFORCE [ ] DET STEP _____
CCRC [ ] W/ _____ CCREC [ ] W/ _____ | CCRC [ ] W/ _____ CCREC [ ] W/ _____

CASE# 93-2099 ADJ GUILT [ ] GUILTY [ ] | CASE# 93-2097 ADJ GUILT [ ] GUILTY [ ]
SEC _____ ESCAP _____ CREDIT _____ | SEC _____ ESCAP _____ CREDIT _____
CONT CONTROL _____ IN PREP _____ REST DIR _____ | CONT CONTROL _____ IN PREP _____ REST DIR _____
DET _____ ESCAP CC _____ FINE _____ S/C _____ | DET _____ ESCAP CC _____ FINE _____ S/C _____
RICO SALE _____ PSA/BOAP _____ MISSOC COSTS _____ | RICO SALE _____ PSA/BOAP _____ MISSOC COSTS _____
HAB OFF [ ] PREV CCRC REINFORCE [ ] DET STEP _____ | HAB OFF [ ] PREV CCRC REINFORCE [ ] DET STEP _____
CCRC [ ] W/ _____ CCREC [ ] W/ _____ | CCRC [ ] W/ _____ CCREC [ ] W/ _____

PSI ORD [ ] S/BOND [ ] A/D COUNSEL [ ] PSYCH/SEX COUNSEL [ ] DEP/EMPLOY [ ] ESSAY [ ] CRM TERM EARLY [ ]
TRT ALCP FAIR VICTIM [ ] NO ALCOHOL [ ] DO NOT VISIT ALCOHOL PLACES [ ] DL REVOKE _____ YRS
OTHER _____ COMMENTS _____

M O T I C N S

dury motion -

GRANTED [ ] [ ] [ ] DENIED [ ] [ ] [ ] CONT [ ] [ ] [ ] HELD UNDER ADVISEMENT [ ] [ ] [ ]

DEFENDANT CAN BE RELEASED ON THESE CHARGES Y [ ] N [ ]
DEFENDANT TO BE REMANDED ON THESE CHARGES Y [ ] N [ ]
DEF TO REPORT TO PROBATION & PAROLE UPON RELEASE Y [ ] N [ ]

Aug 18, 1994 @ 8:30

WHITE - CLERK YELLOW - CCA PINK - DOSS BLUE - PROBATION

22

A-10

_____ Probation Violator
_____ Community Control Violator
_____ Retrial
_____ Resentence

In the Circuit Court, 14th Judicial Circuit,
In and for Bay County, Florida
Division Judge Foster
Case Number 93-2100

G

State of Florida
v.
TYEVESSEL TYVORUS WHITE
Defendant

** OFFICIAL RECORDS **
BK 1520 PG 12
FILE# 94-39485
BAY COUNTY, FLORIDA

FILED
AUG 23 9 01 AM

JUDGMENT

The defendant, TYEVESSEL TYVORUS WHITE, being personally before this court represented by The Honorable Sandra Atkins, the attorney of record, and the state represented by The Honorable William A. Lewis, and having

XX been tried and found guilty by jury/by court of the following crime(s)
___ entered a plea of guilty to the following crime(s)
___ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
I	POSSESSION OF CONTROLLED SUBSTANCE	893.13	3rd	93-2100	0006228219
	COCAINE				

XXX and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

___ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

___ and good cause being shown, IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

25

A-11

State of Florida
v.
TYEVESSEL TYVORUS WHITE
Defendant

Case Number 93-2100

** OFFICIAL RECORDS **
BK 1520 PG 13

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	**7. Left Index**	**8. Left Middle**	**9. Left Ring**	**10. Left Little**
				

Fingerprints taken by: M D Williams Cell Bailiff
Name Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, TYEVESSEL TYVORUS WHITE, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Panama City, Bay County, Florida, this 10th day of AUGUST, 19 94.

Clinton E. Foster
CLINTON E. FOSTER Judge

26

Defendant TYEVESSEL TYVORUS WHITE Case Number 93-2100 DOB. Number 0006228219

SENTENCE

** OFFICIAL RECORDS **
BK 1520 PG 14

(As to Count I)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Sandra Atkins, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

___ and the Court having on _____ (date) deferred imposition of sentence until this date

___ and the Court having previously entered a judgment in this case on _____ (date) now resentences the defendant

___ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court that:

___ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

XX The defendant is hereby committed to the custody of the Department of Corrections.

___ The defendant is hereby committed to the custody of the Sheriff of _____ County, Florida.

___ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (Check one; unmarked sections are inapplicable.):

___ For a term of natural life.

XX For a term of 5 years/ .....

___ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

___ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

27

Defendant TYEVESSEL TYVORI' WH..E Case Number 9" ?i

SPECIAL PROVISIONS

(As to Count I)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm ___ It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking ___ It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance Within 1,000 Feet of School ___ It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender ___ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender ___ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act ___ It is further ordered that the defendant shall serve a minimum of ____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense ___ It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle, Shotgun, Machine Gun ___ It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing Criminal Enterprise ___ It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction ___ The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit XX It is further ordered that the defendant shall be allowed a total of 307 days as credit for time incarcerated before imposition of this sentence.

Prison Credit ___ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Other Provisions, continued:

Consecutive/Concurrent As To Other Counts ___ It is further ordered that the sentence imposed for this count shall run (check one) ___ consecutive to ___ concurrent with the sentence set forth in count _____ of this case.

Page __ of __

28

Defendant TYEVESSEL TYVORI' WH..E Case Number ___ 9 :100

Consecutive/Concurrent As To Other Convictions ___ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ___ consecutive to ___ concurrent with the following: (check one)

___ any active sentence being served.

___ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Bay County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Panama City, Bay County, Florida, this 30th day of JUST AUGUST, 19 94

Clinton E. Foster

CLINTON E. FOSTER Judge

Page __ of __

29

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA, BAY COUNTY

STATE OF FLORIDA
Plaintiff,

vs. CASE NO.: 93-2100

TYVESSEL TYVORUS WHITE
Defendant.

FILED
AUG 29 1 55 PM '94
CLERK
BAY CO.

NOTICE OF APPEAL

NOTICE IS GIVEN that TYVESSEL TYVORUS WHITE, appellant, appeals to the First District Court of Appeals in and for the State of Florida, verdict rendered by the court on June 10th, 1994; and the judgment and sentence rendered on August 18th, 1994 as well as denial of Motion to Suppress on August 17th, 1994.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to William Lewis, Assistant State Attorney, P.O. Box 1040, Panama City, FL 32402 this 29th day of August, 1994.

Sandra G. Atkins
Sandra G. Atkins
405 Oak Avenue
Panama City, FL 32401
904/763-5559
FL Bar #0602846
Attorney for Defendant

POSTED
33

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

Plaintiff/Appellee

vs. CASE NO.: 93-2100
APPEAL CASE NO.:

TYVESSEL TYVORUS WHITE

Defendant/Appellant

FILED
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CLERK
BAY CO.

ORDER OF INSOLVENCY

THIS CAUSE came on before this Court upon the motion of the Defendant/Appellant for the appointment of counsel to represent him on appeal from the Order entered in this cause, and the Court having been advised in the premises, and having made inquiry of the Defendant/Appellant, and having found him so insolvent he was incapable of paying the cost, it is hereby

ORDERED AND ADJUDGED that the Defendant/Appellant is without the funds to pay the cost of this appeal, and Bay County, Florida, shall be any and all costs necessary and incident to the prosecution of this appeal for the Defendant/Appellant.

DONE AND ORDERED in chambers at Panama City, Bay County, Florida, on this 31 day of August, 1994.

CIRCUIT JUDGE

Copies to:
Sandra G. Atkins, Esq.
William Lewis, Assistant State Attorney

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36

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA
Plaintiff/Appellee

vs. CASE NO.: 93-2100
APPEAL CASE NO.:
TYVESSEL TYVORUS WHITE
Defendant/Appellant.

JUDICIAL ACTS TO BE REVIEWED

Defendant/Appellant, TYVESSEL TYVORUS WHITE, by and through his undersigned attorney, states the following Judicial Acts are to be reviewed and the appeal of the verdict rendered by the court on June 10th, 1994, denial of Motion to Suppress on August 17th, 1994 and the Judgment and Sentencing entered by this court on August 18th, 1994, in the above styled cause.

1. Rulings on objections at trial. Particularly objection concerning the allowance as evidence statements of the defendant. Also, objection concerning the admission of the seized cocaine as evidence and reference to other cases (sale cases for which the trial was pending).

2. Denial of Motion for Judgment of Acquittal at the close of the States case and close of all the evidence.

3. Judges denial of Motion to Suppress the statements of the defendant and the seized cocain based on illegal search and seizure.

4. The Judge sentencing the defendant to five years Department of Corrections consecutively followed by five and one half years Department of Corrections received on violation of probation and consecutive to five years Department of Correction as habitual offender for three counts of sale of cocaine.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Honorable William Lewis, Assistant State Attorney, P.O. Box 1040, Panama City, FL 32402 this 31st day of August, 1994.

Sandra G. Atkins
SANDRA G. ATKINS
405 Oak Avenue
Panama City, FL 32401
(904)763-5559
Fla. Bar #0592848/Attorney for Defendant

FILED
AUG 31 1994
CLERK CIRCUIT COURT
BAY COUNTY FLORIDA

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IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA, BAY COUNTY

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 93-2100

TYVESSEL TYVORUS WHITE,

Defendant.

MOTION TO WITHDRAW

COMES NOW, Sandra G. Atkins, special appointed public defender for the Defendant, and moves this Court for an order allowing her to withdraw as Counsel of record in the above cause and would show to the Court that the undersigned attorney has filed the necessary Notice of Appeal, Statement of Judicial Acts to be Reviewed, Direction to Clerk, and Motion For Order Direction Court Reporter to Transcribe Notes. The undersigned attorney would allege that the Public Defender's office will handle the appeal and that her further representation is not necessary.

WHEREFORE, the undersigned respectfully moves this Court for an order allowing the withdrawal of Sandra G. Atkins, as attorney for the Defendant.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to William Lewis, Assistant State Attorney, P.O. Box

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CLERK CIRCUIT COURT
BAY COUNTY FLORIDA

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1040, Panama City, Florida 32402 this 2nd day of September, 1994.

Sandra G. Atkins
405 Oak Avenue
Panama City, FL 32401
904/763-5559
FL Bar #0592846

ORDER ALLOWING WITHDRAWAL OF COUNSEL

THIS CAUSE came on to be heard on the Motion to Withdraw as Counsel of Record filed by Sandra G. Atkins, and allowing the Office of Public Defender, Fourteenth Judicial Circuit, to proceed as counsel of record in this cause. The Court finds that the Defendant is without the funds necessary to retain Sandra G. Atkins for her services, it is therefore,

ORDERED AND ADJUDGED that Sandra G. Atkins, is hereby permitted to withdraw as counsel of record for the Defendant, and the Office of Public Defender, Fourteenth Judicial Circuit, is hereby allowed to proceed as counsel of record in this cause.

DONE AND ORDERED in Chambers at Panama City, Bay County, Florida, on this 19 day of September, 1994.

FILED
SEP 19 1994
CLERK CIRCUIT COURT
BAY COUNTY, FLORIDA

Clinton E. Foster
CLINTON E. FOSTER, CIRCUIT JUDGE

cc: S. G. Atkins, Esq.
W. Lewis, Esq.
S. Christensen

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56

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR BAY COUNTY, FLORIDA

CASE NO.: 93-2100

TYVESSEL TYVORUS WHITE,

Defendant/Appellant,

vs.

STATE OF FLORIDA,

Plaintiff/Appellee.

_____/

JURY TRIAL PROCEEDINGS

Whereupon, the following proceedings came on to be heard before the Hon. Clinton E. Foster, Circuit Court Judge, at the Bay County Courthouse, Panama City, Florida, on the 10th day of June, 1994.

APPEARANCES:

Hon. Bill Lewis, Assistant State Attorney, Fourteenth Judicial Circuit, appeared on behalf of the State of Florida.

Hon. Sandra Atkins, Attorney at Law, Fourteenth Judicial Circuit, appeared on behalf of the Defendant.

REPORTED BY:
SHERRI R. LESSIG

* * *

[Vol. II, p. 12] RANDY SQUIRE

was called as a witness, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q. Tell us your name, please, sir.

A. Randy Squire.

Q. And for whom do you work?

A. Panama City Police Department.

Q. Back in October, specifically on the 14th of October of /93, what was your duty assignment at that point?

A. I was assigned as narcotics investigator with the Bay County Joint Narcotics Task Force.

Q. Okay. In that capacity did you have occasion to assist Officer Pierce in an arrest that he was going to make?

[Vol. II, p. 13] A. Yes, sir.

Q. All right. Whereabouts did you all go to affect this arrest?

A. We went to Sam's Club on 23rd Street.

Q. All right. What was your specific, I am going to call assignment in connection with the arrest?

A. Doug Pierce told me that he intended to seize Mr. White's vehicle for forfeiture and he asked me to go along to bring the vehicle back.

MRS. ATKINS: Judge, I object to the comments about arresting my client, I think that's --

THE COURT: Objection overruled.

BY MR. LEWIS:

Q. All right. When you got out there and made the arrest, where did you get the keys from to operate the car, I guess is the best way?

A. Once we got in the parking lot Officer Pierce removed the car keys from Mr. White's pocket.

Q. Now at the time you went to the vehicle what was it's status, locked, or unlocked?

A. The vehicle was locked.

Q. Now what was done with Mr. White, who dealt with him?

A. Okay, Officer Pierce put him in his undercover vehicle and drove him to the Task Force.

[Vol. II, p. 14] Q. Okay. What did you do?

A. I drove Mr. White's vehicle to the Drug Task Force Office.

Q. When you get to the Task Force Office what do you do relative to his vehicle?

A. We always do an inventory search of the vehicle.

Q. Tell the jury what an inventory search is, what the purpose of that search is?

A. The purpose of this search would be to itemize everything in the vehicle so we can return private property to the owner because we intended to keep the vehicle, itself.

Q. Okay. That protects the Police Department, if they say I had one thousand dollars and you have inventoried it there was no thousand dollars, is that part of the deal?

A. That's correct.

Q. All right. During the course of this inventory search, did you locate any contraband?

A. Yes, sir, I did.

MRS. ATKINS: I object to it being entered into evidence --

THE COURT: Come to side-bar.

(Side-bar Conference:)

[Vol. II, p. 15] THE COURT: Mr. Lewis, as I understand it, they went out to arrest him with a warrant -- did not have a search warrant, don't you have a bad search?

MR. LEWIS: No.

THE COURT: Why?

MR. LEWIS: They are seizing the automobile pursuant to --

THE COURT: Does he have an order to seize it?

MR. LEWIS: You don't have to have one, the law related to the forfeiture relates back to the time of the, the offenses.

THE COURT: If they went to his house with a search warrant to arrest him it was limited in the, if they arrested him at home and they went out there to arrest him with a search warrant limited to the house, would they have been able to search the car?

MR. LEWIS: They were seizing the vehicle pursuant to 93 207 1 through 4, the Florida Forfeiture, Vehicle, or Property Contraband, okay, or whatever they call it, the law relating to seizures of those automobiles relates back, they say the title vesting the state at the time of the offense, there need not be a determination, they have a right to seize the automobile at that point and then at that point they have an inventory search of the vehicle.

[Vol. II, p. 16] THE COURT: I will reserve ruling on her motion, I am bothered by that for this reason, suppose the charge falls when the seizure falls.

MR. LEWIS: No, no that's not true.

THE COURT: You are going to pick up somebody's property and take it regardless of anything, whether they --

MR. LEWIS: It's a different burden, civil burden in the forfeiture action, it's more than preponderance, I believe, but it's clear, convincing, I believe, but there is a different burden and seizures have been upheld even though the criminal case has result in acquitta'.

THE COURT: Supreme Court just remedied some of that.

MR. LEWIS: Well, they might have, I haven't read that case because I don't do the forfeiture stuff.

THE COURT: Okay, I will reserve ruling.

(Conference concluded.)

BY MR. LEWIS:

Q. I use the term contraband, I think that's where I was, are drugs contraband articles?

A. Yes, sir.

Q. Where did you find the contraband articles?

A. Inside the ashtray.

[Vol. II, p. 17] Q. Now how long have you been working dope?

A. In Panama City I have been about two and a half years.

Q. Else where?

A. In Illinois I worked with the Drug Task Force a year before I came here.

Q. Okay. Now what was the -- what was the condition of the ashtray?

MRS. ATKINS: Judge, I just want to say I have an objection to all this.

THE COURT: You may have an objection. Overruled.

MRS. ATKINS: Continuing objection.

BY MR. LEWIS:

Q. What was the condition of the ashtray?

A. The ashtray was empty except for the items what were seized.

Q. Let me show you what has been marked State's 1 for identification and ask you to take a look at the items contained therein and see if you recognize those items, sir.

A. Yes, sir.

Q. All right. What are they?

A. Two crack cocaine rocks.

Q. Okay. Now is that substantially the condition in [Vol. II, pg. 18] which you found them?

A. Yes, sir. They were wrapped in that paper inside that bag.

Q. Okay, looks like maybe a paper towel out of, one of those things in the bathroom?

A. Right.

Q. Okay. What did you do with those once you found them?

A. I took them inside the office and gave them to Officer Pierce.

Q. Okay. Now let me show you what has been marked State's 2 which is a Florida Vehicle Registration Certificate on a 1983 Toyota four door registered to Tyvessel T. White, is that the automobile you found these items in?

A. Yes, sir.

Q. Now in connection with your training and experience as a narcotics officer, is the use of the ashtray a common hiding place, depositing place for contraband type articles, narcotics?

A. Yes, sir.

* * *

[Vol. II, p. 20] Q. Now back to when you went to Sam's, that's [Vol. II, p. 21] where Mr. White was working, is that right?

A. That's right.

Q. Okay. And were you the one that actually placed him under arrest?

A. No. Officer Pierce did.

Q. You went to the vehicle, is that right, you were the one that went to the vehicle and Mr. Pierce was taking care of Mr. White, is that right?

A. We both went into Sam's when the arrest was made and we came out of the building together to the vehicle.

Q. Now Mr. White wasn't -- well, he was put into another vehicle, he didn't ride in his own vehicle, right, he went with Officer Pierce?

A. Right.

Q. You were in the vehicle alone?

A. Yes, sir.

Q. Driving it to the Narcotics Office or Joint Narcotics place?

A. Yes.

Q. Would that be at the Sheriff's Office, is that where you take it to?

A. No, ma'am. Task Force, separate building.

Q. Okay. And did you do any kind of a search when you first entered the vehicle there at Sam's?

[Vol. II, p. 22] A. No, I didn't.

Q. You didn't do any kind of cursory search to make sure there were no weapons in the vehicle or anything like that?

A. No.

Q. Okay. You had the keys and you indicated earlier the door was locked.

A. Yes, it was.

Q. You had to unlock it to get in. Did you check both sides of the vehicle?

A. Yes.

Q. Okay. Both doors were locked?

A. I believe it was a four door car, I believe they were all locked.

Q. And then on the way to the Narcotics Task Force you didn't notice anything in the car at that time, you didn't notice anything in the ashtray at that time?

A. No, I didn't.

Q. Okay. And when you did this, you told the prosecutor a little bit about how you inventory it, but was there anyone else present when you searched the vehicle?

A. No, ma'am.

Q. Okay. Officer Pierce was not present at that [Vol. II, p. 23] time?

A. No, he wasn't.

Q. And you search it and write down what you find, is that the way it goes?

A. No.

Q. How?

A. The initial search is strictly for contraband and weapons like you suggested, and before we make an itemized list of everything in the vehicle we like to give the owner of the vehicle an opportunity to get their property back to save the paperwork.

Q. Okay. So before you make an itemized list, but you do look at everything to make sure that it's things that there is no problem in giving back to someone, is that right?

A. That's correct.

Q. Okay. So how long did it take you to do this search?

A. I don't know; probably at least half an hour.

Q. So it was a pretty thorough search?

A. Yes.

Q. Did you find this contraband immediately almost upon searching the vehicle?

A. Yes, I did.

Q. And what did you do with it when you found it?

[Vol. II, p. 24] A. I took it inside the Task Force Office and gave it to Officer Pierce.

Q. Okay. Did you di any sort of test or anything on it at that point?

A. Officer Pierce did.

Q. Okay. Does it ever become a practice for you to ever have more than one person searching a vehicle, more than one officer?

A. There isn't really a common practice for that, just depends on how many people are available at the time.

Q. Okay.

MRS. ATKINS: You may inquire.

REDIRECT EXAMINATION

BY MR. LEWIS:

Q. You said it took about half an hour to search, it didn't take you half an hour to find this dope?

A. No, sir.

Q. After you found it you either turned it over at that point or SOME other time AND the you continued to search the REST of the vehicle?

A. That's right.

* * *

[Vol. II, p. 26] THE COURT: And do you know whether or not any type of forfeiture proceeding has been initiated against the automobile?

THE WITNESS: I believe that forfeiture has been finished, I think --

THE COURT: Do you know what basis existed at the time you made the arrest and searched the car to file a forfeiture proceeding, what information did you have that that vehicle had been used in illegal activity?

THE WITNESS: There were all Doug Pierce's cases, it's my understanding this vehicle had been used to deliver and sell cocaine on at least two occasions, maybe three.

MR. LEWIS: And you had been present at least at one of those sales?

THE WITNESS: Yes.

[Vol. II, p. 28] THE COURT: A sale from the car?

THE WITNESS: Yes.

MR. LEWIS: Judge, if you remember at the VOP hearing these are the ones where the videotape shows him drive up in the vehicle at a Jr. Food Store, he gets out of the vehicle, then one sale, he actually hands it out of the window to the vehicle, the next vehicle, so they are all documented by the video tapes.

MRS. ATKINS: Judge, I still have a problem about them going to the place where my client works and arresting him then seizing his vehicle, searching it and --

THE COURT: Well, I have some problems with it, too, but it may be legal. I have some problems with the seizure, they knew where he was, went out and got a warrant to go arrest him, I don't know why they couldn't get a search warrant. My concern is whether or not that was merely a charade to search the vehicle.

MR. LEWIS: You don't need a search warrant to search your own properly. The law is, like I said, it's been a long time since I did forfeiture work but the law says that title vests in the investigating agency at the time of the offense which was preceding this so it was their car --

THE COURT: I think the appellate courts have [Vol. II, p. 29] a different version of that as you related strictly to forfeiture you may be correct but when you transpose that to search and seizures I am afraid you might come up with different results. I am concerned about the procedure, that's the reason I reserved jurisdiction, to rule on it later but it appears to me to be an unusual way of doing it. Maybe you do it all the time, just not --

MR. LEWIS: I think it's done all the time.

THE COURT: The question has not been raised on it before.

MRS. ATKINS: My understanding is that when you have sufficient time to get a search warrant that's the way it's supposed to go, they know they want to search something --

THE COURT: My concern is that you can go in under a quasi civil procedure that only requires the burden of proof that is applicable in civil cases to bring in evidence in a criminal case where the burden is beyond and to the exclusion of a reasonable doubt and it would not be otherwise admissible. That's my concern about it. Seems like you're doing by a securius route what you cannot do directly, it may be permissible. You may bring the jury out. You may step down.

MR. LEWIS: If you would, send Officer Pierce [Vol. II, p. 30] in, please.

WHEREUPON,

JOHN PIERCE

was called as a witness, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q. Tell us your name, please, sir.

A. John Douglas Pierce.

Q. Mr. Pierce, back on October 14 what was your duty assignments?

A. Assigned to the Bay County Joint Narcotics Task Force.

Q. Okay. What's your present duty assignment?

A. Assigned narcotics, Panama City Police.

Q. All right. Back on the 14th did you have an occasion to arrest the Defendant?

A. Yes, sir.

Q. Anybody go with you?

A. Yes, sir.

Q. Who was that?

A. Corporal Squire.

Q. All right. You all arrested him at Sam's?

A. Yes, sir.

Q. All right. What was Officer Squire's [Vol. II, p. 31] assignment?

A. To assist in the arrest, if we had any problems -- it's easier with two people, one person -- I am not saying he would but other people would want to fight one person; two people they don't want to fight.

Q. After the arrest was Office Squire charged with the responsibility of driving the Defendant's vehicle back to the Task Force Office?

A. Yes, sir.

Q. All right. Sometime after you all got there did Office Squire bring you some contraband articles that he located in the vehicle?

A. Yes, sir.

Q. Let me show you what has been marked as State's 1 for identification, ask you to take a look at it and see if you recognize it?

A. Yes, sir.

Q. How do you recognize that?

A. It's got my writing on it, my initials on the back.

Q. All right. Now when you get evidence, specifically narcotics type evidence, what do you do with it to send it to the lab?

A. I package it in a plastic container like this, cocaine I do, package it in a container like this and [Vol. II, p. 31] then turn it into our evidence technician.

Q. Do you seal it up, seal that container up?

A. Yes, sir.

Q. Until you opened that envelope at my office this morning has it been in a sealed condition since you received it back from the lab?

A. Yes, sir.

Q. Does it appear to be in the same or substantially the same condition when you received it from Officer Squire?

A. Yes, sir. Except it's got an "X" right there.

Q. Okay.

MR. LEWIS: At this time I would offer into evidence State's 1.

MRS. ATKINS: Some objection.

THE COURT: Same ruling.

BY MR. LEWIS:

Q. Let me show you what been marked State's 2 for identification, Florida Vehicle Registration Certificate on a 1983 Toyota four-door registered to Tyvessel T. White, is that the vehicle that was seized at the time of his arrest?

A. Yes, sir.

Q. Is this the vehicle Mr. Squire drove to the Task Force Office?

[Vol. II, p. 33] A. Yes, sir.

MR. LEWIS: At this time I would offer into evidence State's 2.

MRS. ATKINS: Same objection.

THE COURT: Admitted subject to prior ruling.

* * *

[Vol. II, p. 34] Q. The man that made that remark, that you arrested at Sam's -- well let me ask you this, one other question before we get that far. After you arrested him, did you, where did you get the keys to operate the [Vol. II, p. 35] vehicle?

A. Out of his pocket.

Q. All right. Those are the keys you gave to Corporal Squire?

A. Yes, sir.

* * *

[Vol. II, p. 41] THE COURT: I am going to let the matter go, I have reserved jurisdiction on your Motion to Suppress.

* * *

BY MRS. ATKINS:

[Vol. II, p. 44] Q. Officer Pierce, now you weren't the one that actually searched the vehicle?

A. No.

Q. Corporal Squires did that?

A. Yes, ma'am.

Q. There was no search conducted that the actual cite when it was picked up at Sam's?

A. No, ma'am.

Q. Okay. Did you ever get in the vehicle at all?

A. When I recovered the registration slip.

Q. Okay. When was that?

A. Afterwards, I had to do inventory on the stuff [Vol. II, p. 45] inside the vehicle.

Q. So that was down at the Task Force?

A. Task Force, yes, ma'am.

Q. Okay. So you're the one that actually did the inventory rather than Corporal Squire?

A. He might have done part, I don't know.

Q. Okay. But Mr. White was not able to actually be present when the car was searched, is that right?

A. No, ma'am.

Q. He was inside I guess with you, and Officer Squires was searching the vehicle, is that right?

A. Yes, ma'am.

Q. And you were the one that Corporal Squires gives the contraband to, is that right?

A. Yes, ma'am.

Q. What did you do with it?

A. Field tested it, then packaged it up for evidence.

Q. Okay. Then later on is when you retrieved the registration?

A. Yes, ma'am.

* * *

[Vol. II, p. 76] THE COURT: Let the record reflect the Defendant moved for a directed verdict of acquittal at the close of all the evidence and it was denied, renewed at the close of the State's case and denied and renewed at close of all of the evidence.

* * *

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

TYVESSEL TYVORUS WHITE,

Defendant/Appellant, DCA CASE NO:

vs. CASE NO: 93-2100

STATE OF FLORIDA,

Plaintiff/Appellee.

* * *

The following pages constitute the Sentencing on the 17th day of August, 1994, in the above-styled cause, heard before the Honorable Clinton E. Foster, Circuit Judge, at the Bay County Courthouse, Panama City, Florida. Taken before Rebecca Ann Akins, a Notary Public and Official Court Reporter in and for the State of Florida at Large.

* * *

REBECCA ANN AKINS
OFFICIAL COURT REPORTER
POST OFFICE BOX 573
PANAMA CITY, FLORIDA 32402-0573

* * *

[Vol. III, p. 83] AUGUST 17, 1994

THE COURT: Is your, is your client here?

MRS. ATKINS: Yes, he's here, Judge.

THE COURT: What's his name?

MRS. ATKINS: Tyvessel White.

THE COURT: White, okay.

MRS. ATKINS Judge, we're, we're here on sentencing for Mr. White. However, we did have that issue about the --

THE COURT: Okay, I, I am going to --

MRS. ATKINS: Okay. I have my memorandum, Judge, but I really didn't find a whole lot. I'll, I'll go ahead and give it to you, but I couldn't find any real specific --

THE COURT: I, I would, I would encourage you -- I'm going to deny your motion but I'm going to encourage you to appeal that --

MRS. ATKINS: Yes, sir.

THE COURT: -- that issue. As a matter of fact, I invite you to --

MRS. ATKINS: Yes, sir.

THE COURT: -- appeal it because as I understand the, the, the way the thing came down . . .

MRS. ATKINS: Yes, sir.

THE COURT: . . . is that at some earlier time [Vol. III, p. 83] this defendant had been observed trafficking in cocaine or selling cocaine or buying cocaine.

MR. LEWIS: Yes, sir.

MRS. ATKINS: Selling cocaine was what they were --

THE COURT: Right. And at some later time they secured an arrest warrant and went out to arrest him.

MR. LEWIS: They actually arrested him on the signed complaint, Your Honor. They didn't even have a --

THE COURT: A signed complaint.

MR. LEWIS: Yes, sir.

THE COURT: At some later time.

MR. LEWIS: Right.

MRS. ATKINS: Yeah.

THE COURT: At this later time, when they went out to arrest him, they, after the arrest, seized the, his automobile under the forfeiture statute.

MR. LEWIS: Let me at this point interrupt the Court. I'm going, I'm going to say it's simultaneous with the arrest.

THE COURT: Simultaneous with, with the arrest.

MR. LEWIS: Yes, sir. Yes, sir.

[Vol. III, p. 84] THE COURT: And in this intervening time they made no effort to, to secure a forfeiture order or implement formal forfeiture proceedings.

MRS. ATKINS: Correct.

MR. LEWIS: At the time of the seizure they had not done that.

THE COURT: Had not done that.

MRS. ATKINS: Correct, yes.

MR. LEWIS: Correct.

THE COURT: And in my mind the, the constitutional protection against unreasonable searches and seizures were, was effectively circumvented. I can't find any law to support that.

MRS. ATKINS: Yes, sir.

MR. LEWIS: And I think the law is to the contrary, that I've provided to the Court.

THE COURT: And that's, that's the only reason that I'm not granting your motion.

MRS. ATKINS: Yes, sir.

THE COURT: And I invite you to appeal that.

MRS. ATKINS: Yes, sir. I, I could not find anything specific on that either, Judge.

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

Tyvessel Tyvorus WHITE, Appellant,
v.
STATE of Florida, Appellee.

No. 94-2823.

July 29, 1996.

Defendant was convicted in the Circuit Court, Bay County, Clinton Foster, J., of possession of cocaine, which was found during inventory search of his automobile following its warrantless seizure pursuant to Florida Contraband Forfeiture Act. Defendant appealed. On motion for certification, the District Court of Appeal, Van Nortwick, J., held that: (1) Act authorized warrantless seizure of vehicle based on probable cause to believe that defendant had previously used vehicle to facilitate sale of cocaine; (2) Act did not violate Fourth Amendment; and (3) defendant's pre-*Miranda* statement was involuntary.

Affirmed.

Wolf, J., issued concurring and dissenting opinion.

Nancy A. Daniels, Public Defender; David P. Gauldin, Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General; Douglas Gurnic, Assistant Attorney General, Tallahassee, for Appellee.

ON MOTION FOR CERTIFICATION

VAN NORTWICK, Judge.

We grant appellant's motion for certification, withdraw our prior opinion in this cause, substitute the following opinion in its stead, and certify a question of great public importance to the Florida Supreme Court.

Tyvessel Tyvorus White appeals his judgment and sentence for possession of cocaine. White argues that the trial court erred in denying his motion to suppress the introduction into evidence of cocaine found in White's car during a warrantless inventory search of the car following its seizure pursuant to the Florida Contraband Forfeiture Act, sections 932.701--932.707, Florida Statutes (1993), and in failing to exclude the testimony of a police officer relating to a prejudicial statement made by White prior to receiving "*Miranda* warnings." (FN1) Because we conclude (i) that the police had probable cause to seize White's vehicle under the Forfeiture Act and the subsequent inventory search of the seized car was a reasonable procedural measure and (ii) that White's statement was freely and voluntarily given without interrogation or its functional equivalent, we affirm.

Factual and Procedural Background

In October 1993, White was arrested at his place of employment by police officers with the Bay County Joint Narcotics Task Force and charged with the sale of a controlled substance. (FN2) Prior to his arrest, the arresting police officers had determined to seize White's automobile under the Forfeiture Act on the grounds that, based on police eye-witnesses and videotape, it had been used in the delivery and sale of cocaine. As contemplated by the Forfeiture Act, section 932.703, Florida Statutes (1993), no prior court order or warrant was issued authorizing the seizure. The car was seized and removed to the task force headquarters, where a routine inventory search revealed

two pieces of crack cocaine in the ashtray. Based on the seizure of this crack cocaine, White was also charged with possession of a controlled substance, his conviction for which is the subject of the instant appeal.

White was also transported to the task force headquarters. Prior to the arresting officer reading White his constitutional warnings, and during the course of the officer explaining to White the charges for which he was arrested, White remarked that "He had recently got back into the business." Because of prior discussions between the arresting officer and White, the officer understood the "business" to mean the sale of cocaine.

White moved to suppress the cocaine seized during the search of his car and, at trial, objected to the introduction of his statements made prior to receiving the *Miranda* warnings. The trial court reserved ruling on these issues and allowed the evidence and statements to go to the jury. White was found guilty as charged. At a subsequent hearing, White's suppression motion was denied.

Forfeiture Seizure and Subsequent Search

On appeal, White argues that the trial court should have suppressed the cocaine seized from his car. He contends that the seizure of his vehicle was impermissible since it was made without warrant or probable cause and the subsequent search was unreasonable under the Fourth Amendment since the forfeiture seizure was improper and the police had no probable cause to search the vehicle.

The Florida Contraband Forfeiture Act authorizes law enforcement agencies to seize vehicles "of any kind" used "to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article." s 932.701(2)(a)5; 932.702(3), Fla. Stat. (1993). The Forfeiture Act defines "contraband article"

to include "any controlled substance as defined in chapter 893." s 932.701(2)(a)1, Fla. Stat. (1993). Chapter 893 includes cocaine and its derivatives in its list of controlled substances. s 893.03(2)(a)4, Fla. Stat. (1993). Thus, the Forfeiture Act clearly authorizes the police to seize vehicles used to facilitate the sale of cocaine.

The Forfeiture Act sets forth the procedure to be used in seizing personal property, as follows:

> Personal property may be seized at the time of the violation or subsequent to the violation, provided that the person entitled to notice is notified at the time of the seizure or by certified mail, return receipt requested, that there is a right to a(sic) adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act.

s 932.703(2)(a), Fla. Stat. (1993). A post-seizure adversarial preliminary hearing may be requested within 15 days after receipt of this notice and the hearing must be set and noticed by the seizing agency and held by the court within 10 days of receipt of the hearing request or as soon as practicable thereafter. *Id.* At the hearing, the court must determine whether probable cause existed for the seizure. s 932.703(2)(a), Fla. Stat. (1993). Thus, the only pre-seizure procedural requirement under the Forfeiture Act is the giving of a notice of the right to a subsequent hearing. Here, White does not claim this notice requirement was violated.

White's argument that to seize his car under the Forfeiture Act the police were required to have probable cause to believe the vehicle contained contraband at the time of seizure is without merit. Under the Forfeiture Act, the seizing agency is required only to have probable cause to believe that the property sought to be seized "was used, is being used, was attempted to be used, or was intended to be used" in violation of the Forfeiture Act. s

932.703(2)(c), Fla. Stat. (1993). The fact that the police, as here, did not have probable cause to believe the vehicle contained contraband or was being used in violation of the Forfeiture Act at the moment they seized the vehicle does not render the seizure unlawful under the Act. Having probable cause to believe there was prior usage of the vehicle in violation of the Forfeiture Act is sufficient. (FN3) *See, Knight v. State,* 336 So.2d 385, 387 (Fla. 1st DCA 1976), *cert. denied,* 345 So.2d 424 (Fla.1977)(Forfeiture Act "clearly contemplates that proof of past violations of the act may provide the basis for forfeiture."); *State v. One (1) 1977 Volkswagen,* 455 So.2d 434 (Fla. 1st DCA 1984), *approved,* 478 So.2d 347 (Fla.1985)(police properly seized a vehicle based upon a drug transaction occurring almost two months prior to the seizure); *In re Forfeiture of 1979 Toyota Corolla,* 424 So.2d 922, 924 (Fla. 4th DCA 1982)("[T]ransportation by automobile of a key figure to the site of a drug transaction constitutes a sufficient nexus to justify the forfeiture of the car.").

Similarly, White's argument that the police were required to obtain a warrant or court order before seizing the vehicle is without merit. Nothing in the Forfeiture Act requires the obtaining of a warrant or court order before seizing a vehicle. *See, State v. Pomerance,* 434 So.2d 329, 330 (Fla. 2d DCA 1983)(The Forfeiture Act "nowhere mentions obtaining a warrant; it simply states that an offending vehicle 'shall be seized.' We know of no rationale for judicially engrafting onto the statute a requirement that a warrant be obtained."); *In re Forfeiture of 1986 Ford PU,* 619 So.2d 337, 338 (Fla. 2d DCA 1993)(Forfeiture Act does not require a warrant, consent, or exigent circumstances prior to seizing a vehicle used in violation of the statute).

The fact that the Florida Legislature has authorized by statute the warrantless seizure of a vehicle based upon probable cause that it had been used to facilitate a drug transaction, however, does not end our inquiry. The further question raised here is whether such a warrantless seizure of a motor vehicle violates constitutional

prohibitions against illegal search and seizure. (FN4) We hold that it does not.

Neither the Florida nor United States Supreme Court has directly addressed whether the Fourth Amendment requires law enforcement officers to obtain a warrant prior to seizing a vehicle under the Florida Forfeiture Act or similar statute. The Florida Forfeiture Act, however, is substantively similar to the federal forfeiture statute, *see,* 21 U.S.C. s 881, and the Uniform Controlled Substances Act, *see,* 9 U.L.A. s 505. Thus, decisions of federal courts and courts of certain sister states are useful to our consideration here.

The federal circuits are split in their analysis of this issue. The majority of the circuits that have considered this question have held that a warrantless seizure of a vehicle under the federal forfeiture act does not violate the Fourth Amendment and that evidence obtained in a subsequent inventory search is admissible in a criminal prosecution. *U.S. v. Decker,* 19 F.3d 287 (6th Cir.1994); *U.S. v. Pace,* 898 F.2d 1218 (7th Cir.1990); *U.S. v. Valdes,* 876 F.2d 1554 (11th Cir.1989); *U.S. v. One 1978 Mercedes Benz, Four-Door Sedan,* 711 F.2d 1297 (5th Cir.1983); *U.S. v. Kemp,* 690 F.2d 397 (4th Cir.1982); *U.S. v. Bush,* 647 F.2d 357 (3d Cir.1981). Only three circuits have held the procedure in question to have been a violation of a defendant's Fourth Amendment rights. *See, U.S. v. Dixon,* 1 F.3d 1080 (10th Cir.1993); *U.S. v. Lasanta,* 978 F.2d 1300 (2d Cir.1992); *U.S. v. $149,442.43 in U.S. Currency,* 965 F.2d 868 (10th Cir.1992); *U.S. v. Linn,* 880 F.2d 209 (9th Cir.1989). (FN5) We have examined these federal decisions and find the rationale employed by the majority view to be persuasive.

Several state appellate courts have also addressed this issue. For example, in *State v. McFadden,* 63 Wash.App. 441, 820 P.2d 53, 57 (Wash.App.1991), *rev. denied,* 119 Wash.2d 1002, 832 P.2d 487 (Wash.1992), the Washington court held:

> We hold that a motor vehicle seized pursuant to [Washington forfeiture statute] on probable cause that it is used to facilitate a drug transaction is subject to a valid inventory search and evidence found in the course of such a search is admissible at trial.

See also, Lowery v. Nelson, 43 Wash.App. 741, 719 P.2d 594 (Wash.App.1986), *rev. denied,* 106 Wash.2d 1013 (1986); *State v. Brickhouse,* 20 Kan.App.2d 495, 890 P.2d 353 (1995); *c.f., Davis v. State,* 813 P.2d 1178 (Utah 1991).

We join the majority of the federal and state jurisdictions which have considered this issue and hold that a warrantless seizure of a motor vehicle based on probable cause that the vehicle was used in violation of the Forfeiture Act does not violate the Fourth Amendment prohibition against unreasonable searches and seizure. Although the decisions upholding a warrantless forfeiture seizure state various reasons, we prefer the rationale adopted by the Eleventh Circuit in *U.S. v. Valdes,* 876 F.2d at 1559-60. In *Valdes,* in upholding under the Fourth Amendment a seizure and subsequent inventory search of an automobile under the federal forfeiture statute, the court reasoned and held:

> If federal law enforcement agents, armed with probable cause, can arrest a drug trafficker without repairing to the magistrate for a warrant, we see no reason why they should not also be permitted to seize the vehicle the trafficker has been using to transport his drugs. Appellants would have us accord the trafficker's property interest greater deference than his liberty interest; they seem to suggest that the injury caused by erroneous detention (i.e. the period of time between seizure, or arrest, and the magistrate's ruling ending the detention) is somehow greater in the case of one's property than it is in the case of one's liberty. We are not persuaded. We therefore hold that the warrantless seizures of appellants' automobiles, and the subsequent inventory

> searches, were not unreasonable under the fourth amendment. (Footnotes omitted).

Id.

We are also influenced in our holding by the fact that the property seized here was a motor vehicle, a type of property found by the Supreme Court to have less Fourth Amendment protection against warrantless searches and seizures under the so-called "automobile exception," *California v. Carney,* 471 U.S. 386, 390, 105 S.Ct. 2066, 2068, 85 L.Ed.2d 406 (1985). Although privacy interests in a motor vehicle are protected under the Fourth Amendment, under the automobile exception those interests have a lesser degree of protection because "the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought," *id.,* 471 U.S. at 390, 105 S.Ct. at 2069, and "because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." *Id.,* 471 U.S. at 391, 105 S.Ct. at 2069. Thus, a warrantless search and seizure of a motor vehicle may pass constitutional scrutiny absent any exigent circumstances other than the characteristics inherent in a motor vehicle. *Id.* 471 U.S. at 390-91, 105 S. Ct. at 2069. Logically, for the same reasons, a motor vehicle may be seized under a forfeiture statute without a prior warrant. *See e.g., U.S. v. Linn,* 880 F.2d at 215; *U.S. v. $29,000--U.S. Currency,* 745 F.2d 853 (4th Cir.1984).

Because we hold that the police properly seized the appellant's vehicle under the Forfeiture Act, we conclude that the subsequent inventory search was reasonable and, thus, the cocaine seized in the vehicle was properly admitted at trial. *Cooper v. State of California,* 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967); *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976)(inventory searches pursuant to standard police procedures are reasonable under Fourth Amendment); *U.S. v. Valdes,* 876 F.2d at 1559-60; *State v. Pomerance,* 434 So.2d 329, 330 (Fla. 2d DCA 1983)(if the defendant's automobile was

properly seized under the Forfeiture Act "the search of the trunk of the car was a proper inventory search"). We find *Cooper* directly applicable here. In *Cooper,* the Supreme Court upheld the warrantless search of a vehicle justified solely on the basis that the vehicle was in the lawful custody of the state following its seizure under California's forfeiture statute, ruling:

> It would be unreasonable to hold that the police, having to retain the car in their custody ... had no right, even for their own protection, to search it. It is no answer to say that the police could have obtained a search warrant, for "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." *United States v. Rabinowitz,* 339 U.S. 56, 66, 70 S.Ct. 430, 435, 94 L.Ed. 653. Under the circumstances of this case, we cannot hold unreasonable under the Fourth Amendment the examination or search of a car validly held by officers for use as evidence in a forfeiture proceeding.

Cooper, 386 U.S. at 61-62, 87 S.Ct. at 791.

Nevertheless, because we recognize that neither the Florida Supreme Court nor United States Supreme Court has directly addressed the issue presented here, and that the federal circuit courts have reached different conclusions concerning this constitutional issue, we certify to the Florida Supreme Court the following question as one of great public importance:

> WHETHER THE WARRANTLESS SEIZURE OF A MOTOR VEHICLE UNDER THE FLORIDA FORFEITURE ACT (ABSENT OTHER EXIGENT CIRCUMSTANCES) VIOLATES THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION SO AS TO RENDER EVIDENCE SEIZED IN A SUBSEQUENT INVENTORY SEARCH OF THE VEHICLE INADMISSIBLE IN A CRIMINAL PROSECUTION.

Statement Prior to Miranda Warning

White argues that his statement to the police that "[h]e had recently got back into the business" was made while he was in custody during the "functional equivalent" of interrogation and, therefore, violated the requirements of *Miranda.* We find, however, that competent substantial evidence in the record supports a conclusion that the statement was spontaneously, freely, and voluntarily made and, accordingly, the trial court did not abuse its discretion in admitting the statement into evidence. *Gray v. State,* 640 So.2d 186, 194 (Fla. 1st DCA 1994).

Miranda established that "[p]rior to any questioning, the [suspect] must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." 384 U.S. at 444, 86 S.Ct. at 1612. *Miranda* states, however, that "[a]ny statement given freely and voluntarily without any compelling influence is, of course, admissible in evidence." 384 U.S. at 478, 86 S.Ct. at 1630. Nevertheless,

> the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean
>
> > questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

384 U.S. at 444, 86 S.Ct. at 1612. Thus, "[t]he fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of

warnings and counsel, but whether he can be interrogated...." 384 U.S. at 478, 86 S.Ct. at 1630.

In *Rhode Island v. Innis,* 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980), the Court concluded "that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Id.*, 446 U.S. at 300-301, 100 S.Ct. at 1689. The *Innis* court further concluded that the functional equivalent of interrogation under *Miranda* refers to practices that the police "should know" are "reasonably likely to elicit an incriminating response from the suspect." *Id.*, 446 U.S. at 301, 100 S.Ct. at 1689-1690. This interrogation standard is an objective one which "focuses primarily upon perceptions of the suspect, rather than the intent of the police." *Id.*, 446 U.S. at 301, 100 S.Ct. at 1690.

In the instant case, while the arresting officer was reading the arrest affidavits to White, explaining the charges for which he was arrested, White made the incriminating statement. Although at the time the statement was made, White had not been read his *Miranda* rights, his statement did not come in response to any question posed by the police. Thus, to conclude whether White's statement was properly admissible, it must be determined whether the statement was made voluntarily or through the functional equivalent of interrogation.

The Supreme Court in *Innis* "address[ed] for the first time the meaning of 'interrogation' under *Miranda* ...," *id.* 446 U.S. at 297, 100 S.Ct. at 1687-88, and discussed the two-prong analysis used in determining whether a suspect's statements are freely and voluntarily given or are the result of interrogation or its functional equivalent. In *Innis,* the defendant was arrested for murder, kidnapping and armed robbery, during which he had used a shotgun. *Innis,* 446 U.S. at 294, 100 S.Ct. at 1686. At the time of his arrest he was unarmed. *Id.* After being given his *Miranda* rights and stating that he wanted to speak with a lawyer he was placed in the back of a police car. *Id.* During the ride to the

police station the two arresting officers in the patrol car began a conversation about the missing shotgun, mentioning their concerns that one of the handicapped children from a nearby school might find the gun and injure themselves. *Id.*, 446 U.S. at 294-95, 100 S.Ct. at 1686-87. The defendant interrupted the conversation and stated that he would show the police were the gun was located. *Id.*, 446 U.S. at 295, 100 S.Ct. at 1687. The Supreme Court concluded that at the time the statement was made the defendant was not being interrogated within the meaning of *Miranda. Id.*, 446 U.S. at 302, 100 S.Ct. at 1690. The Supreme Court reasoned as follows:

> It is undisputed that the first prong of the definition of "interrogation" was not satisfied, for the conversation between [the] Patrolmen ... included no express questioning of the respondent....
>
> Moreover, it cannot be fairly concluded that the respondent was subject to the "functional equivalent" of questioning. It cannot be said, in short, that [the] Patrolmen ... should have known that their conversation was reasonably likely to elicit an incriminating response from the respondent.

Id. The Court went on to explain that, while the officer's comments obviously "struck a responsive chord" in the defendant, the conversation did not amount to the functional equivalent of interrogation. *Id.*, 446 U.S. at 303, 100 S.Ct. at 1691. The Court reasoned that there was

> nothing in the record to suggest that the officers were aware that the respondent was *peculiarly susceptible* to an appeal to his conscience concerning the safety of handicapped children. Nor [was] there anything in the record to suggest that the police knew that the respondent was *unusually disoriented or upset* at the time of his arrest.

Id., 446 U.S. at 302-303, 100 S.Ct. at 1690. (Emphasis added). Therefore, the Court found that the record failed to show that the police "should have known" the conversation they had "was reasonably likely to elicit an incriminating response" from the defendant, *id.*, 446 U.S. at 303, 100 S.Ct. at 1691, and held the statement was properly admitted into evidence.

Similarly, in the instant case, it is undisputed that White's statement was not made in response to express questioning. Further, it cannot be fairly concluded that White was subject to the "functional equivalent" of questioning. The arresting officer's act of explaining the charges to White was reasonable and understandable given that White had just been placed under arrest and had asked to know why. Like in *Innis*, the fact that the officer's explanation may have "struck a responsive chord," causing White to interject that "[h]e recently got back into the business," does not constitute the functional equivalent of an interrogation. Nothing in the record indicates to us that the arresting officers should have known that the explanation of charges to White was reasonably likely to elicit an incriminating response. Further, nothing in the record shows that the officers were aware that White was "peculiarly susceptible" or so "unusually disoriented or upset" that simply informing him of the charges would likely evoke incriminating statements. Because we find that White's statement was made freely and voluntarily, and not in response to express questioning or during the functional equivalent of an interrogation, we hold that the statement was properly admissible at trial under *Miranda*. *See also, Hawkins v. State*, 217 So.2d 582, 583 (Fla. 4th DCA 1969).

AFFIRMED.

WEBSTER, J., concurs.

WOLF, J., concurs and dissents with written opinion.

WOLF, Judge, concurring in part and dissenting in part.

I concur in the majority's decision to certify a question to the Florida Supreme Court, but respectfully dissent from their decision to uphold the warrantless seizure of the automobile.

The warrantless seizure of an automobile absent exigent circumstances violates the Fourth Amendment of the United States Constitution even though probable cause exists to believe that the automobile is subject to forfeiture as a result of prior narcotics transactions.

Appellant was arrested at his workplace based upon narcotics transactions unrelated to his present conviction. Officer Pierce was the arresting officer, and he was accompanied by Officer Squire. The purpose of Squire's presence at the arrest was to drive appellant's vehicle which was to be seized for forfeiture because it had been used to sell and deliver cocaine. There was no warrant authorizing seizure of the vehicle.

At the time of appellant's arrest, he had the car keys in his pocket and the vehicle was parked outside in the parking lot of his place of employment. The police seized and searched the vehicle. The subsequent search of the vehicle revealed two pieces of crack cocaine in the ashtray of the car. It is this cocaine which is the subject of the charges in the instant case.

The Fourth Amendment requires that police obtain a warrant for search and seizure of an automobile absent exigent circumstances. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). While exigent circumstances may justify a warrantless seizure, no such circumstances exist in this case. The state argues, however, that the warrantless seizure is justified based on the fact that probable cause existed to believe that the car was subject to forfeiture. There is no Florida case that directly deals with this issue. In *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla.1991), the court found that notification was not constitutionally mandated prior to a seizure pursuant to the Florida Contraband Forfeiture Act, sections

932.701-932.704, Florida Statutes (1993). The court did not rule directly on whether a warrant was required, but stated,

> The state conceded at oral argument that the fourth amendment applies to the seizure
>
> > of property in forfeiture actions, and argued that the fourth amendment protections adequately protect property owners. We fully agree that the fourth amendment applies when there has been a seizure.

Department of Law Enforcement, supra at 963. The court further states in a footnote,

> Since article I, section 12 of the Florida Constitution expressly requires conformity with the fourth amendment of the United States Constitution, *the warrant requirement of article I, section 12 also applies to forfeiture actions under Florida law.*

Id. at 963 (emphasis added).

The decision of the second district in *In re: Forfeiture of 1986 Ford PU,* 619 So.2d 337 (Fla. 2d DCA 1993), is not inconsistent with the supreme court's statement concerning the applicability of the Fourth Amendment's warrant requirement. The court ruled that nothing in the case of *Department of Law Enforcement, supra,* or the forfeiture statute specifically requires a warrant, but the court did not specifically rule on whether a warrantless seizure would violate the Fourth Amendment. To the extent that the decision could be argued to support the argument that no warrant is required, it is unpersuasive because no analysis is presented to support this position.

Federal courts which have dealt with the necessity of obtaining a warrant when property is subject to a federal forfeiture statute have reached different conclusions. The ninth circuit has

held that a warrantless seizure of an automobile absent exigent circumstances violates the Fourth Amendment, (FN6) notwithstanding probable cause to believe that the car is subject to forfeiture. *UNITED STATES V. MCCORMICK,* 502 F.2D 281 (9TH CIR. 1974); *UNITED STATES V. SPETZ,* 721 F.2D 1457 (9TH CIR.1983). IN *U.S. V. LASANTA,* 978 F.2D 1300 (2ND CIR.1992)(FN7), the court discussed the cases which had upheld the warrantless seizures of automobiles subject to forfeiture and stated,

> We find no language in the fourth amendment suggesting that the right of the people to be secure in their "persons, houses, papers, and effects" applies to all searches and seizures except civil-forfeiture seizures in drug cases.

Id. at 1305. In rejecting the attorney general's argument, the court goes on to state,

> While congress may have intended civil forfeiture to be a "powerful weapon in the war on drugs," it would, indeed, be a Pyrrhic victory for the country, if the government's relentless and imaginative use of that weapon were to leave the constitution itself a casualty.

Id. at 1305 (citations omitted).

In *United States v. Valdes,* 876 F.2d 1554 (11th Cir.1989), the 11th circuit, however, justified a warrantless seizure of property subject to forfeiture on the basis that a warrantless arrest of a person may be made based on probable cause, and a person's property is entitled to no greater protection than the person himself. *See also U.S. v. Pace,* 898 F.2d 1218 (7th Cir.1990). Such warrantless seizures have also been upheld based on the lack of reasonable expectation of privacy attached to a car on a public street. *See Pace, supra* at 1242; *U.S. v. Bush,* 647 F.2d 357 (3rd Cir.1981). This line of reasoning is based on a statement in the Supreme Court's opinion in *G.M. Leasing Corp. v. United States,*

429 U.S. 338, 97 S.Ct. 619, 50 L.Ed.2d 530 (1977), where a warrantless seizure of an automobile by internal revenue agents to satisfy a tax levy was upheld. (FN8) Other cases seem to adopt the reasoning that once you have probable cause to seize a vehicle, or believe it is used for drugs, then exigent circumstances continue to exist even if the seizure is not made until several months later. *U.S. v. One Mercedes Benz, Four-Door Sedan,* 711 F.2d 1297 (5th Cir.1983); *U.S. v. Kemp,* 690 F.2d 397 (4th Cir.1982).

These cases validating a warrantless search absent exigent circumstances are unpersuasive. The argument concerning no reasonable expectation of privacy concerning your vehicle on a public street fails to recognize the factual situation in *G.M. Leasing Corp., supra.* That case involved a seizure of an automobile in order to satisfy a tax debt to the United States, a situation which is similar to a private repossession of an automobile to satisfy a debt. The language in this opinion concerning expectation of privacy on a public street must be read in context of the facts of the case. A person who is in default on a debt or who is subject to a judgment lien does not have a reasonable expectation that his property will not be repossessed on a public street. On the other hand, a person has a reasonable expectation that if the government is seizing his property other than for purposes of satisfying a debt, a warrant will be secured. It is difficult to respond to the argument concerning the theory that if you once believed that the car contained drugs, you may forever seize the car based on exigent circumstances. This theory fails to recognize that both probable cause and exigent circumstances become stale and will no longer support the legality of a later seizure. *Cf. Montgomery v. State,* 584 So.2d 65 (Fla. 1st DCA 1991).

The argument relied on by the majority for upholding the search, that property may be seized based on probable cause much like a person, while having some initial facial appeal, is still equally unpersuasive. Neither the Supreme Court of the United States nor the Florida Supreme Court has accepted this position.

General application of this concept would serve to totally emasculate the warrant requirements for the seizure of an automobile announced in *Coolidge, supra.* In addition, the position taken by the majority does not deviate from the argument that somehow the forfeiture statute authorizes warrantless seizures of property absent exigent circumstances, the very argument which is rejected in *In re: Warrant to Seize One 1988 Chevrolet Monte Carlo,* 861 F.2d 307, 311 (1st Cir.1988), and *O'Reilly v. United States,* 486 F.2d 208, 214 (8th Cir.1973).

I, therefore, see no reason to depart from the rule announced by the Supreme Court in *Coolidge, supra,* and alluded to by our supreme court in *Department of Law Enforcement,* that an automobile is not subject to warrantless seizure absent exigent circumstances.

FN1. *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

FN2. The charges on which White was arrested are not the subject of the instant appeal.

FN3. Here, the police had probable cause to believe White's vehicle had been used to facilitate the sale of cocaine, as indicated by the following trial testimony:

> THE COURT: Do you know what basis existed at the time you made the arrest and searched the car to file a forfeiture proceeding, what information did you have that that vehicle had been used in illegal activity?
>
> OFFICER SQUIRE: These were all Doug Pierce's cases, it's my understanding this vehicle had been used to deliver and sell cocaine on at least two occasions, maybe three.
>
> PROSECUTOR: And you had been present at at least one of those sales?

OFFICER SQUIRE: Yes.

THE COURT: A sale from the car?

OFFICER SQUIRE: Yes.

FN4. White has not challenged the forfeiture on due process grounds and we do not address due process issues here. *See, Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 676-80, 94 S.Ct. 2080, 2088-90, 40 L.Ed.2d 452 (1974)(due process does not require federal law enforcement officers to obtain a warrant prior to seizing property they have probable cause to believe is subject to forfeiture); *U.S. v. Valdes*, 876 F.2d 1554, 1560 at fn. 12 (11th Cir.1989)(due process is satisfied under forfeiture statute "if the government is required to have a sound basis for believing that property is forfeit, and the owner has a fair opportunity to regain it."); *Smith v. Hindery*, 454 So.2d 663 (Fla. 1st DCA 1984)(Forfeiture Act does not violate due process).

FN5. In each of *Dixon, Lasanta* and *Linn*, the court, while holding that the warrant requirement applied to seizures for the purpose of forfeiture, still found another method of admitting the evidence. In *Dixon*, the court held the search and seizure to be illegal, but concluded that a pound of cocaine, found days after the car was seized and discovered only when the cellular phone was being removed, was in plain view and admissible under that exception to the warrant requirement. 1 F.3d at 1084. In *Lasanta*, after concluding that the search and seizure was illegal, the court found it to be harmless error and affirmed the conviction. 978 F.2d at 1306. In *Linn*, the court found the warrantless seizure of a motor vehicle was reasonable because the mobility of the vehicle, in effect, created "exigent circumstances." 880 F.2d at 215 ("... the 'mobility' underpinning of the automobile exception is, of course, closely related to our 'exigent circumstances' analysis, and is the compelling factor.").

FN6. *See also O'Reilly v. United States*, 486 F.2d 208, 214 (8th Cir.), *cert. denied*, 414 U.S. 1043, 94 S.Ct. 546, 38 L.Ed.2d 334 (1973); *In re: Warrant to Seize One 1988 Chevrolet Monte Carlo*, 861 F.2d 307, 311 (1st Cir.1988) (notes the continuing validity of *United States v. Pappas*, 613 F.2d 324, 330 (1st Cir.1979), where court held that the federal forfeiture statute would only be constitutional if construed to allow seizure "only when seizure immediately follows the occurrence that gives the federal agents probable cause ... and the exigencies of the surrounding circumstances make the requirement of obtaining process unreasonable or unnecessary").

FN7. In *United States v. Bagley*, 772 F.2d 482 (9th Cir.1985), the court appears to abandon *McCormick* and *Spetz* relying on *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). Both *Bagley* and *Carney*, however, involve cases where the police had reasonable grounds to believe that either contraband or evidence would be found in the vehicle at the time of the seizure or search. Such a reasonable belief did not exist in this case.

FN8. In *U.S. v. Decker*, 19 F.3d 287 (6th Cir.1994), relied on by the majority, the vehicles were properly seized pursuant to a warrant, and the focus concerned the propriety of the inventory after the vehicle was searched. I do not quarrel with the legitimacy of the inventory search but unlike *Decker*, in the instant case, the legality of the seizure is at issue.

SUPREME COURT OF FLORIDA

TYVESSEL TYVORUS WHITE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

No. 88,813

[February 26, 1998]

ANSTEAD, J.

We have for review the opinion in White v. State, 680 So. 2d 550 (Fla. 1st DCA 1996). We accepted jurisdiction to answer the following question certified to be of great public importance:

> WHETHER THE WARRANTLESS SEIZURE OF A MOTOR VEHICLE UNDER THE FLORIDA FORFEITURE ACT (ABSENT OTHER EXIGENT CIRCUMSTANCES) VIOLATES THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION SO AS TO RENDER EVIDENCE SEIZED IN A SUBSEQUENT INVENTORY SEARCH OF THE VEHICLE INADMISSIBLE IN A CRIMINAL PROSECUTION.

Id. at 555. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. For the reasons expressed below, we answer the certified question

in the affirmative. We hold that a citizen's property is protected by the federal and Florida constitutions against warrantless seizure even when the seizure is done pursuant to a statutory scheme for forfeiture.

MATERIAL FACTS[1]

On October 14, 1993, petitioner Tyvessel Tyvorus White (White) was arrested at his place of employment on charges unrelated to this case. After taking White into custody on those unrelated charges, and securing the keys to his automobile, the arresting officers seized his automobile from the parking lot of White's employment. The police did not seize the vehicle incident to White's arrest or obtain a prior court order or warrant to authorize the seizure. Rather, the basis of the seizure was the arresting officers' belief that White's automobile had been used several months earlier to deliver illegal drugs, and therefore the vehicle was subject to forfeiture by the government.[2] After confiscation of the vehicle, a subsequent search turned up two pieces of crack cocaine in the ashtray.

Based on the discovery of the cocaine, White was charged with possession of a controlled substance. White subsequently objected to the introduction into evidence of the cocaine seized during the post-arrest search of his automobile. The trial court reserved ruling on the issue and allowed the evidence to go to a jury.

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[1]The following facts are taken from the First District's opinion. White, 680 So. 2d at 551-55.

[2]The dates of the alleged prior illegal activities were July 26, 1993, and August 4 and 7, 1993. We commend the State's candor in providing these dates during oral argument. As both parties noted at oral argument, the record is unclear as to the actual dates. The State noted that these dates are contained in White's motion for postconviction relief under Florida Rule of Criminal Procedure 3.850.

White was thereafter convicted of possession of cocaine; and subsequently the trial court formally denied White's objection and motion to suppress the cocaine evidence.

On appeal, the First District affirmed White's conviction and approved the government's warrantless seizure of White's car. The majority opinion found that the government met the requirements of the Florida Contraband Forfeiture Act, sections 932.701-932.707, Florida Statutes (1993) (hereinafter Forfeiture Act) in that the warrantless seizure of White's automobile was based upon probable cause to believe that the vehicle had facilitated illegal drug activity at some time in the past. Further, the majority found that the warrantless seizure did not violate White's Fourth Amendment right to be secure against unreasonable searches and seizures.[3] In dissent, Judge Wolf asserted that the "warrantless seizure of an automobile absent exigent circumstances violates the Fourth Amendment of the United States Constitution even though probable cause exists to believe that the automobile is subject to forfeiture as a result of prior narcotics transactions." White, 680 So. 2d at 557 (Wolf, J., concurring in part and dissenting in part).

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[3]"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Amend. IV, U.S. Const. In 1982, article I, section 12 of the Florida Constitution was amended to add what has become known as the conformity clause because "we are bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment and provide no greater protection than those interpretations." Bernie v. State, 524 So. 2d 988, 990-91 (Fla. 1988); see Soca v. State, 673 So. 2d 24, 27 (Fla.), cert. denied, 117 S. Ct. 273 (1996).

Because the court found that neither this Court nor the United States Supreme Court had addressed the issue of whether law enforcement agencies must obtain a warrant prior to seizing a citizen's property under the Florida Contraband Forfeiture Act, the First District certified the issue as one of great public importance to this Court.

LAW AND ANALYSIS

In holding that no prior court authorization was required in order to seize and search White's vehicle, the First District majority applied the "automobile exception" to the warrant requirement. While we recognize the continuing validity of the "automobile exception" to the warrant requirement, we find it inapposite here.

In his dissent, Judge Wolf relied primarily on the opinion of the United States Court of Appeals for the Second Circuit in U.S. v. Lasanta, 978 F.2d 1300 (2d Cir. 1992).[4]

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[4]Because Lasanta contains a comprehensive and reasoned treatment of this issue, we quote from the Second Circuit's opinion at length:

> A threshold question presented here is whether the government's seizure of the car, without a warrant, as a civil forfeiture, was authorized. The forfeiture statute, 21 U.S.C. §881, gives power to the attorney general to seize for forfeiture, inter alia, a vehicle that is used to facilitate a narcotics transaction. In carrying out such a statutorily authorized seizure, however, agents of the attorney general must also obey the constitution, particularly the fourth amendment's command that there be no unreasonable seizures.
>
> . . . .
>
> We find no language in the fourth amendment

suggesting that the right of the people to be secure in their "persons, houses, papers, and effects" applies to all searches and seizures except civil-forfeiture seizures in drug cases. U.S. Const. amend. IV. We reject out of hand the government's argument that congress can conclusively determine the reasonableness of these warrantless seizures, and thereby eliminate the judiciary's role in that task of constitutional construction. See U.S. Const. art. VI, cl. 2. While congress may have intended civil forfeiture to be a "powerful weapon in the war on drugs", United States v. 141st Street Corp. by Hersh, 911 F.2d 870, 878 (2d Cir. 1990) (noting statute's legislative history), cert. denied, 498 U.S. 1109, 111 S. Ct. 1017, 112 L. Ed. 2d 1099 (1991), it would, indeed, be a Pyrrhic victory for the country, if the government's relentless and imaginative use of that weapon were to leave the constitution itself a casualty.

. . . .

To be valid, therefore, this warrantless seizure must meet one of the recognized exceptions to the fourth amendment's warrant requirement. Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032, 29 L. Ed. 2d 564 (1971). Surely the government cannot argue that the canister, tucked underneath the driver's seat, was found in the plain view of an investigative officer in a place she was entitled to be. See, e.g., Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990) (explaining the elements of a plain-view seizure). Nor does the government claim that the search was incident to Cardona's arrest, which occurred on the doorstep of Cardona's home. See, e.g., Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2039-40, 23 L. Ed. 2d 685 (1969) (police may search arrestee's person and area within

his immediate control incident to arrest). The substantial distance between the site of Cardona's arrest and the vehicle in the driveway forecloses any question of the agents' need to search the vehicle for weapons to ensure their safety during the arrest. Chimel, 395 U.S. at 763, 89 S. Ct. at 2040 (noting that safety animates this seizure rationale).

The government does not even suggest that exigent circumstances might justify its warrantless seizure of the vehicle. See, e.g., Chambers v. Maroney, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970) (outlining the automobile exception to the warrant requirement); Carroll v. United States, 267 U.S. 132, 146, 45 S. Ct. 280, 282, 69 L. Ed. 543 (1925) (noting rationale of automobile exception). Investigative agents could have held no realistic concern that the car, parked not in a public thoroughfare, but in Cardona's private driveway, might be removed and any evidence within it destroyed in the time a warrant could be obtained. Cardona was not operating the vehicle, nor was he in it or even next to it; when the agents knocked on his door to arrest him, he was inside his house, asleep.

Nor was it impractical for the agents to obtain a warrant to seize Cardona's car. See, e.g., United States v. Paroutian, 299 F.2d 486, 488 (2d Cir. 1962) (search upheld when exceptional circumstances rendered it impractical to secure warrant). Previous surveillance had made agents aware of the vehicle's presence, thus enabling them to have requested and obtained a search warrant during either of their two attempts to secure a warrant to arrest Cardona. Even if the agents had been surprised by the presence of the limousine, and

He also noted this Court's opinion in Department of Law Enforcement v. Real Property, 588 So. 2d 957, 963 n.14 (Fla. 1991), wherein we recognized that because "article I, section 12 of the Florida Constitution expressly requires conformity with the fourth amendment of the United States Constitution, the warrant requirement of article I, section 12 also applies to seizures in forfeiture actions under Florida law." White, 680 So. 2d at 558 (Wolf, J., concurring in part and dissenting in part).

DEPARTMENT OF LAW ENFORCEMENT

In Department of Law Enforcement, we were able to uphold the constitutionality of Florida's forfeiture act only by imposing numerous restrictions and safeguards on the use of the act in order to protect a citizen's property from arbitrary action by the government. In discussing the act we declared:

> The Act raises numerous constitutional concerns that touch upon many substantive and procedural rights protected by the Florida Constitution. In construing the Act, we note that forfeitures are considered harsh exactions, and as a general rule they are not favored either in law or equity. Therefore, this Court has long followed a policy that it must strictly construe forfeiture statutes.

588 So. 2d at 961. The major thrust of our holding was that in order to comply with constitutional due process requirements, the government must strictly observe a citizen's constitutional protections when invoking the drastic remedy of forfeiture of a

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> even if they harbored probable cause to suspect it contained evidence of narcotics-related activity, they still could have posted an agent to remain with the vehicle, and then secured a search warrant.

Id. at 1303-06. This reasoning is sound and speaks for itself.

citizen's property. In addition to expressly holding that the Fourth Amendment applies to forfeiture attempts by the government, we specifically explained:

> In those situations where the state has not yet taken possession of the personal property that it wishes to be forfeited, the state may seek an ex parte preliminary hearing. At that hearing, the court shall authorize seizure of the personal property if it finds probable cause to maintain the forfeiture action.

Id. at 965. We conclude that the government's unauthorized and warrantless seizure, absent exigent circumstances not established here, clearly violated the constitutional safeguards we recognized in Department of Law Enforcement.

The government did not seek a warrant or an "ex parte preliminary hearing" here in order to secure a neutral magistrate's determination of probable cause. The government just seized the property, thereby putting the property owner and any others claiming an interest in the property in the position of having to take affirmative action against the government in order to protect their rights. This is the very antithesis of the cautious procedure we mandated in Department of Law Enforcement. We simply cannot accept the government's position that it may act at anytime, anywhere, and regardless of the existence of exigent circumstances, or a change in ownership or possession, to seize a citizen's property once believed to have been used in illegal activity, without securing the authorization of a neutral magistrate.

AUTOMOBILE EXCEPTION

As previously noted, the only basis asserted for the unauthorized government seizure here is the so-called automobile exception to the warrant requirement. The district court majority cited California v. Carney, 471 U.S. 386, 391 (1985), for the proposition that automobiles are afforded less Fourth Amendment

protection against warrantless searches and seizures due to their "ready mobility" and diminished expectations of privacy due to their pervasive governmental regulation. The automobile exception is predicated upon the existence of exigent circumstances consisting of the known presence of contraband in the automobile at the time, combined with the likelihood that an opportunity to seize the contraband will be lost if it is not immediately seized because of the mobility of the automobile. See Chambers v. Maroney, 399 U.S. 42 (1970). For example, in Carney, law enforcement officers had direct evidence that illegal drugs were present and that the suspect was distributing illegal drugs from the vehicle. Accordingly, the Court concluded that the officers "had abundant probable cause to enter and search the vehicle for evidence of a crime." Carney, 471 U.S. at 395.

Since it is conceded that the government had no probable cause to believe that contraband was present in White's car, we conclude that Carney and the automobile exception are inapposite as authority. There is a vast difference between permitting the immediate search of a movable automobile based on actual knowledge that it then contains contraband and that an opportunity to seize the contraband may be lost if not acted on immediately, and the altogether different proposition of permitting the discretionary seizure of a citizen's automobile based upon a belief that it may have been used at some time in the past to assist in illegal activity. The exigent circumstances implicit in the former situation are simply not present in the latter situation.

The automobile exception is a narrow, situation-dependent exception which requires much more than the fact that an automobile is the object sought to be seized and searched.

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[5]A young man who had just left the motor home only moments before told agents of the Drug Enforcement Administration that he had received marijuana from the suspect while in the motor home. Carney, 471 U.S. at 388.

Critically, there must be probable cause to believe contraband is in the vehicle at the time of the search and seizure, Carney,[6] and there must be some legitimate concern that the automobile "might be removed and any evidence within it destroyed in the time a warrant could be obtained." Lasanta, 978 F.2d at 1305. The majority opinion below simply failed to address the fundamental requirement of Carney:

> In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause [to believe contraband is in the vehicle] is met.

471 U.S. at 392 (emphasis added).

As is vividly demonstrated in the Lasanta case, cited by Judge Wolf, the automobile exception does not apply to either the facts of that case or White's case. See White, 680 So. 2d at 557 (Wolf, J., concurring in part and dissenting in part) (noting that White was arrested at his workplace, his car keys were in his pocket, and his car was parked outside in his company's parking lot). In Lasanta, the court could easily have been writing about this case when it described the obvious absence of exigent circumstances in the government's forfeiture seizure:

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[6]See also Pennsylvania v. Labron, 116 S. Ct. 2485, 2487 (1996) (reaffirming Carney in reasoning that if a car "is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more"); California v. Acevedo, 500 U.S. 565, 580 (1991) (holding that "[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained").

> The government does not even suggest that exigent circumstances might justify its warrantless seizure of the vehicle. See, e.g., Chambers v. Maroney, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970) (outlining the automobile exception to the warrant requirement); Carroll v. United States, 267 U.S. 132, 146, 45 S. Ct. 280, 282, 69 L. Ed. 543 (1925) (noting rationale of automobile exception). Investigative agents could have held no realistic concern that the car, parked not in a public thoroughfare, but in Cardona's private driveway, might be removed and any evidence within it destroyed in the time a warrant could be obtained. Cardona was not operating the vehicle, nor was he in it or even next to it; when the agents knocked on his door to arrest him, he was inside his house, asleep.

978 F.2d at 1305. Similarly, the absence of probable cause to believe contraband was in the vehicle combined with an obvious lack of any other exigent circumstances renders the automobile exception inapplicable here. The exception does not apply when no probable cause exists and the police arrest either a sleeping suspect, Lasanta, or a suspect at work with the keys in his pocket. White. There simply was no concern presented here that an opportunity to seize evidence would be missed because of the mobility of the vehicle. Indeed, the entire focus of the seizure here was to seize the vehicle itself as a prize because of its alleged prior use in illegal activities, rather than to search the vehicle for contraband known to be therein, and that might be lost if not seized immediately.

SEIZURE OF PROPERTY VS. SEIZURE OF PERSON

Finally, the reasoning of the district court majority, that since a defendant's person can be seized without a warrant his property should be no different, simply proves too much. If we were to follow that reasoning to its logical conclusion we would, in

essence, amend the Fourth Amendment out of the Constitution and do away with the requirement of a warrant entirely for the search and seizure of property.[7] It will always be more intrusive to seize a person than it will be to seize his property. That is the nature of human values. However, such an approach would apparently have us do away with the constitutional law of search and seizure as to property entirely, simply because we have permitted the warrantless arrest of a person.

The United States Supreme Court has purposely subjected the Fourth Amendment to only a "few well-delineated exceptions." Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971). For example, the courts have carefully restricted the law of search and seizure to permit a limited search of an arrestee and his person "incident" to a valid arrest. See Chimel v. California, 395 U.S. 752 (1969). However, the reasoning of the district court majority, if carried to its logical bounds, would do away with the limitations established to a search incident to a lawful arrest and now permit a search of anything, anywhere, based upon probable cause, without a warrant, since those actions involving property would obviously be less intrusive than seizing the person. Obviously, we are not willing to accept such a proposition and its implications.[8]

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[7]As Chief Justice Kogan recently reminded us, the genius of our federal and state constitutions is that they define basic rights that neither the legislative nor executive branches can modify. Krischer v. McIver, 697 So. 2d 97, 112 (Fla. 1997) (Kogan, C.J., dissenting). These remarkable documents fenced off from the "ordinary political process" these rights guaranteed all Americans by ensuring they "could not be repealed by a mere majority vote of legislators nor . . . alter[ed] through any process except constitutional amendment." Id. at 112-13.

[8]As Judge Wolf correctly observed in his dissent below, the Fourth Amendment mandates that absent exigent circumstances, police must secure a warrant for the search and seizure of an automobile. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

CONCLUSION

In the end, the maintenance of an orderly society mandates that a citizen's property should not be taken by the government, in the absence of exigent circumstances, without the intervention of a neutral magistrate. Certainly the warrant requirement would have posed no undue burden on the government here where the vehicle was parked safely at the petitioner's place of employment and the government had the keys and the petitioner in custody. Moreover, any inconvenience to the government pales in comparison to the consequences for our justice system and constitutional order if such abuses are left unchecked. See Department of Law Enforcement. As the Second Circuit poignantly observed in Lasanta, 978 F.2d at 1305, "it would, indeed, be a Pyrrhic victory for the country, if the government's imaginative use of that weapon [civil forfeiture] were to leave the constitution itself a casualty."

In summary, we answer the certified question in the affirmative and hold that the warrantless seizure of a citizen's property is protected by the federal and Florida constitutions even when the seizure is made pursuant to a statutory forfeiture scheme. Accordingly, we quash the First District's opinion and remand this case for proceedings consistent herewith.

It is so ordered.

KOGAN, C.J., SHAW and HARDING, JJ., and GRIMES, Senior Justice, concur.
WELLS, J., dissents with an opinion, in which OVERTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

WELLS, J., dissenting.

For more than twenty-three years, Florida's forfeiture statute has been enforced by Florida courts, including this Court, as the legislature wrote it. Today, by this decision, the majority judicially amends this twenty-three-year-old statute and places Florida in the minority of federal and state jurisdictions, which require a preseizure warrant in order to enforce forfeiture statutes. Today's decision also puts our state procedure at odds with federal forfeitures in Florida since the Eleventh Circuit is among the majority of jurisdictions which recognize that warrantless seizures pursuant to forfeiture statutes are not in violation of the Fourth Amendment to the United States Constitution.

Indeed, Coolidge's holding remains good law to the extent that "no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.'" Id. at 468. Moreover, in the case that overruled Coolidge in part, Horton v. California, 496 U.S. 128 (1990), the Supreme Court not only reaffirmed Coolidge's essential holding but also noted that it had extended "the same rule to the arrest of a person in his home." Id. at 137 n.7. Therefore, since no exigent circumstances existed in this case, the warrantless seizure of White's car was unconstitutional. See Coolidge, 403 U.S. at 454-55 (reaffirming rule that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions") (emphasis added). Even though automobiles are afforded lesser Fourth Amendment protection, there is still a strong presumption against warrantless searches and seizures of a citizen's property by the government, absent exigent circumstances. See Coolidge, 403 U.S. at 468 (reiterating that "even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure"). Coolidge's requirement that a "plain view" seizure must also be "inadvertent" was overruled in Horton, 496 U.S. at 140. Minus that incidental reasoning, Coolidge remains good law.

I dissent because I agree with the majority of jurisdictions and the Eleventh Circuit and do not believe that this change in the law of Florida is suddenly required by the Fourth Amendment. The case of United States v. Lasanta, 978 F.2d 1300 (2d Cir. 1992), upon which the majority opinion relies, is clearly the minority view.

The seizure in this case was not an unusual enforcement of Florida's forfeiture law or contrary to forfeitures which the appellate courts of Florida have approved since the inception of the statute. Clearly, the period of time between when the police eyewitnesses and the video-tape evidence showed the vehicle being used in the delivery and sale of cocaine and the seizure of the vehicle was within previous approvals by Florida courts. Soon after the forfeiture statute became effective on October 1, 1974, it was recognized that proof of past violations may be the basis for forfeiture. State v. One 1977 Volkswagen, 455 So. 2d 434 (Fla. 1st DCA 1984) (police properly seized a vehicle based upon drug transaction occurring almost two months prior to seizure), approved, 478 So. 2d 347 (Fla. 1985); Knight v. State, 336 So. 2d 385, 387 (Fla. 1st DCA 1976), cert. denied, 345 So. 2d 427 (Fla. 1997).

In 1983, the Second District directly confronted the issue of whether a preseizure warrant needed to be obtained. The Second District held that it did not in State v. Pomerance, 434 So. 2d 329, 330 (Fla. 2d DCA 1983), stating:

> We have found no case addressing this issue. However, section 932.703, Florida Statutes (1981), which provides for the forfeiture of motor vehicles used to transport, conceal, or facilitate the sale of contraband, in violation of section 932.703, nowhere mentions obtaining a warrant; it simply states that an offending vehicle "shall be seized." We know of no rationale for judicially engrafting onto the statute a requirement that a warrant be obtained.

(Emphasis added.)

In 1985, in Duckham v. State, 478 So. 2d 347 (Fla. 1985), this Court did an analysis of the forfeiture statute and cases from our district courts and federal circuit courts and upheld the forfeiture of a motor vehicle seized almost two months after the vehicle had been used to facilitate a drug transaction. It is important to note that this seizure of the motor vehicle was not based upon there being probable cause to believe that there was contraband in the vehicle at the time of or before its seizure. The district court's decision in Duckham was approved with this Court noting:

> Even though no drugs had been transported in the car, no conversations had taken place in the car, the policeman had never been in the car, and Duckham used the car solely to transport himself to the restaurant where he struck the deal and then to his apartment, the district court found that Duckham used his car to facilitate the sale of contraband within the meaning of subsection 932.702(3), Florida Statutes (1981).

478 So. 2d at 348.

Also in 1985, this Court upheld the forfeiture statute against a due-process attack in Lamar v. Universal Supply Co., Inc., 479 So. 2d 109 (Fla. 1985). This Court specifically stated:

> The seizure of property pursuant to a forfeiture statute constitutes an extraordinary situation in which postponement of notice and hearing until after seizure does not deny due process. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S. Ct. 2080, 40 L. Ed. 2d 452 (1974). The due process rights of claimants are adequately protected, therefore, by the requirement that the state attorney promptly file a forfeiture action following seizure. § 932.704(1), Fla. Stat. (1983).

479 So. 2d at 110.

In 1989, in an opinion written by Justice Overton, this Court did another extensive analysis of this statute in State v. Crenshaw, 548 So. 2d 223 (Fla 1989), and strongly upheld the enforcement of this statute.

The majority here cites to this Court's 1991 analysis of the forfeiture statute in Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991). However, the majority's quote omits the following sentence which completes the paragraph from which the quote in the majority opinion is taken: "In those situations where a law enforcement agency already has lawfully taken possession of personal property during the course of routine police action, the state has effectively made an ex parte seizure for the purposes of initiating a forfeiture action." 588 So. 2d at 965. Through the date of that opinion (in fact until today) law enforcement agencies were considered to have lawfully taken possession of personal property when possession was taken on the basis of and in conformity with the forfeiture statute. Lamar, 479 So. 2d at 110.

When Department of Law Enforcement is read in full context, that decision cannot be fairly said to engraft a warrant requirement into the statute. This was the reading given to that decision by the Second District in In re Forfeiture of 1986 Ford, 619 So. 2d 337, 338 (Fla. 2d DCA 1993), when it held that "nothing in [Department of Law Enforcement] or the forfeiture statute requires a warrant, consent or exigent circumstances."

Furthermore, the majority opinion here incorrectly states that "the only basis asserted for the unauthorized government seizure here is the so-called automobile exception to the warrant requirement." Majority op. at __. What the district court actually said was, "We are also influenced in our holding by the fact that the property seized here was a motor vehicle . . . ." White v. State, 680 so. 2d 550, 554 (Fla. 1st DCA 1996). The district

court's opinion therefore correctly pointed out that privacy interests in a motor vehicle have a lesser degree of Fourth Amendment protection because of a vehicle's mobility and because the expectation of privacy is less than that relating to one's home or office, citing to California v. Carney, 471 U.S. 386 (1985). The statement by the district court majority is indisputably correct.

However, the clear reason for the district court majority's decision is the compelling development of precedent in Florida in respect to the statute, which the majority in this Court simply casts aside without mention, and the weight of authority from both federal and state jurisdictions, which the majority fails to acknowledge. One case representing the majority view is from the Eleventh Circuit: United States v. Valdes, 876 F.2d 1554 (11th Cir. 1989). The district court majority followed the reasoning of the Eleventh Circuit in Valdes. The rejection of Valdes by this Court's majority places Florida in the illogical (and I believe untenable) situation of there being a warrantless seizure available to federal law enforcement pursuant to the federal forfeiture statute because it is not a violation of the Fourth Amendment to the United States Constitution and a warrantless seizure not being available to Florida law enforcement pursuant to a substantially similar state forfeiture statute because of a holding by this Court that a warrantless seizure is in violation of the Fourth Amendment to the United States Constitution. Though we are not bound to do it, I believe this Court should apply the Fourth Amendment to the United States Constitution in accord with its application by the federal circuit court that has Florida within its jurisdiction. This is particularly so when the Eleventh Circuit's decision is in accord with the majority of other jurisdictions.

I believe the Seventh Circuit clearly expressed correctly the state of the law in federal and state jurisdictions in United States v. Pace, 898 F.2d 1218, 1241 (7th Cir. 1990), when it said:

> The weight of authority, however, holds that police may seize a car without a warrant pursuant to a forfeiture

statute if they have probable cause to believe the car is subject to forfeiture. See, e.g., United States v. Valdes, 876 F.2d 1554, 1558-60 (11th Cir. 1989); United States v. $29,000--U.S. Currency, 745 F.2d 853, 856 (4th Cir. 1984); United States v. One 1978 Mercedes Benz, 711 F.2d 1297, 1302 (5th Cir. 1983); United States v. One 1977 Lincoln Mark V Coupe, 643 F.2d 154, 158 (3d Cir. 1981); United States v. One 1975 Pontiac LeMans, 621 F.2d 444, 450 (1st Cir. 1980) (citing cases). We agree with the majority approach. The federal courts' overwhelming approval of warrantless forfeiture seizures based on probable cause, along with the historical acceptance of the constitutionality of such searches, are evidence that such searches have been generally accepted as reasonable. See United States v. Bush, 647 F.2d 357, 370 (3d Cir. 1981) (citing cases). It is difficult to ignore this general acceptance. Furthermore, under a civil forfeiture statute, "the vehicle . . . is treated as being itself guilty of wrongdoing." United States v. One Mercedes Benz 280S, 618 F.2d 453, 454 (7th Cir. 1980). Thus, seizing a car from a pubic place based on probable cause is analogous to arresting a person outside the home based on probable cause. Such an arrest, even without a warrant, does not violate the Fourth Amendment, although it is possibly a more significant intrusion on privacy interests than seizing an unoccupied car. See Bush, 647 F.2d at 370 (citing United States v. Watson, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976)); see also Valdes, 876 F.2d at 1559; One 1978 Mercedes Benz, 711 F.2d at 1302. And the Supreme Court has approved warrantless seizures in a similar situation. In G.M. Leasing Corp. v. United States, 429 U.S. 338, 97 S. Ct. 619, 50 L. Ed. 2d 530 (1977), Internal Revenue Service agents seized cars subject to tax liens without a warrant. The Court held that the seizures did not violate the Fourth Amendment; the agents had probable cause to believe that the cars were subject to seizure, and the seizures took

> place "on public streets, parking lots, or other open places." See id. at 351-52, 97 S. Ct. at 627-28; G.M. Leasing provides strong support for the majority position. See One 1975 Pontiac LeMans, 621 F.2d at 450, which adopted the panel's reasoning in United States v. Pappas, 600 F.2d 300, 304 (1st Cir.), vacated 613 F.2d 324 (1st Cir. 1979); Bush, 647 F.2d at 369; see also 3 Wayne R. LaFave, Search and Seizure § 7.3(b), at 83 (2d ed. 1987). For all these reasons, we conclude that it was proper for the police to seize Pace's and Besase's cars from the parking lot of Savides' condominium complex, if the police had probable cause to believe the cars were subject to forfeiture.

(Emphasis added; footnote omitted.) See also United States v. Musa, 45 F.3d 922, 924 (5th Cir. 1995). I would continue Florida's adherence to this view.

Assuming that the warrantless seizure was authorized, there is no doubt that the inventory search was appropriate. See Caplan v. State, 531 So. 2d 88 (Fla. 1988); Padron v. State, 449 So. 2d 811 (Fla. 1984).

OVERTON, J., concurs.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

First District - Case No. 94-2823
(Bay County)

Nancy A. Daniels, Public Defender and David P. Gauldin, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General; James W. Rogers, Bureau Chief, Criminal Appeals and Daniel A. David, Assistant Attorney General, Tallahassee, Florida,

for Respondent

SUPREME COURT OF FLORIDA

MONDAY, JUNE 1, 1998

TYVESSEL TYVORUS WHITE,	*
	*
Petitioner,	*
	* CASE NO. 88,813
v.	* District Court of Appeal
	* 1st District-No.94-2823
STATE OF FLORIDA,	*
	*
Respondent.	*
	*
* *	

Respondent's Motion for Rehearing is hereby denied.

KOGAN, C.J., SHAW, HARDING and ANSTEAD, JJ., and GRIMES, Senior Justice, concur.
OVERTON and WELLS, JJ., dissents.

A True Copy	TC
	cc: Hon. Jon S. Wheeler, Clerk
TEST	Hon. Harold Bazzel, Clerk
	Hon. Clinton E. Foster, Judge
Sid J. White	Mr. David P. Gauldin
Clerk, Supreme Court	Mr. James W. Rogers
	Mr. Daniel A. David